

2-15-2011

# Hopkins v. Pneumotech, Inc. Agency Record Dckt. 38354

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# LAW CLERK

Vol. 1 of 1

## BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

ANGELA S. HOPKINS, Respondent/Claimant, )

vs. )

PNEUMOTECH INC., Appellant/Employer, )

and )

IDAHO DEPARTMENT OF LABOR/Respondent. )

SUPREME COURT #: 38354

AGENCY RECORD

## BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

### For Claimant/Appellant

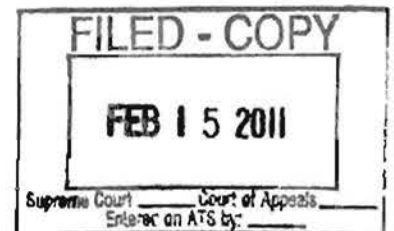
ANGELA S. HOPKINS, PRO SE  
5100 Morris Hill Road  
Boise ID 83706

### For Employer/Respondent

BRADLEY B. POOLE, CHARTERED  
1110 North Five Mile Road  
Boise, ID 83713

### For Respondent

TRACEY K. ROLFSEN  
Deputy Attorney General  
Idaho Department of Labor  
317 W. Main St.  
Boise, Idaho 83735



38354

COPY

**BEFORE THE SUPREME COURT OF THE STATE OF IDAHO**

ANGELA S. HOPKINS, Respondent/Claimant,	)	
	)	<b>SUPREME COURT #: 38354</b>
vs.	)	
	)	
PNEUMOTECH INC., Appellant/Employer,	)	<b>AGENCY RECORD</b>
	)	
and	)	
	)	
IDAHO DEPARTMENT OF LABOR/Respondent.	)	
_____	)	

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

**For Claimant/Appellant**

ANGELA S. HOPKINS, PRO SE  
5100 Morris Hill Road  
Boise ID 83706

**For Employer/Respondent**

BRADLEY B. POOLE, CHARTERED  
1110 North Five Mile Road  
Boise, ID 83713

**For Respondent**

TRACEY K. ROLFSEN  
Deputy Attorney General  
Idaho Department of Labor  
317 W. Main St.  
Boise, Idaho 83735

COPY

## TABLE OF CONTENTS

LIST OF EXHIBITS.....	i
DECISION OF APPEALS EXAMINER, date of mailing August 17, 2010.....	1
APPEALS EXAMINER'S NOTES, printed August 30, 2010.....	6
NOTICE OF APPEAL, filed August 26, 2010.....	7
NOTICE OF APPEARANCE AND REQUEST FOR NOTICE, filed August 26, 2010.....	9
NOTICE OF FILING OF APPEAL, filed August 31, 2010.....	11
CERTIFICATE OF SERVICE OF COMPACT DISC OF THE HEARING, filed September 1, 2010.....	13
IDOL NOTICE OF APPEARANCE, filed September 8, 2010 .....	14
CERTIFICATE OF SERVICE OF CLAIMANT'S CORRESPONDENCE, filed September 10, 2010.....	16
EMPLOYER'S REQUEST FOR HEARING, filed October 8, 2010 .....	42
EMPLOYER'S MOTION TO ACCEPT LATE FILING, filed October 8, 2010 .....	43
EMPLOYER'S NOTICE OF SUBMISSION OF DOCUMENTS, filed October 8, 2010 .....	45
AFFIDAVIT OF BRADLEY B. POOLE, Filed October 8, 2010.....	49
CERTIFICATE OF SERVICE FOR AFFIDAVIT OF BRADLEY B. POOLE TO IDAHO DEPARTMENT OF LABOR filed October 13, 2010.....	53
CERTIFICATE OF SERVICE FOR MOTION TO ACCEPT LATE FILING OF ADDITIONAL DOCUMENTS TO IDAHO DEPARTMENT OF LABOR filed October 13, 2010.....	54
CERTIFICATE OF SERVICE FOR REQUEST FOR HEARING TO IDAHO DEPARTMENT OF LABOR filed October 13, 2010.....	55

CERTIFICATE OF SERVICE FOR NOTICE OF SUBMISSION OF DOCUMENTS TO	
IDAHO DEPARTMENT OF LABOR filed October 13, 2010.....	56
ORDER DENYING REQUESTS FOR A NEW HEARING, filed October 14, 2010.....	57
DECISION AND ORDER, filed November 2, 2010 .....	61
CERTIFICATE OF SERVICE OF DECISION AND ORDER PERSONALLY GIVEN TO	
CLAIMANT, filed November 9, 2010 .....	68
EMPLOYER’S NOTICE OF APPEAL, filed December 13, 2010.....	70
CERTIFICATE OF APPEAL OF ANGELA S. HOPKINS, filed December 14, 2010.....	73
CERTIFICATION, dated December 13, 2010 .....	74
CERTIFICATION OF RECORD, dated January 10, 2010.....	75
NOTICE OF COMPLETION, dated January 10, 2010.....	76

## INDEX

AFFIDAVIT OF BRADLEY B. POOLE, Filed October 8, 2010 .....	49
APPEALS EXAMINER’S NOTES, printed August 30, 2010 .....	6
CERTIFICATE OF SERVICE FOR AFFIDAVIT OF BRADLEY B. POOLE TO IDAHO DEPARTMENT OF LABOR filed October 13, 2010 .....	53
CERTIFICATE OF APPEAL OF ANGELA S. HOPKINS, filed December 14, 2010.....	73
CERTIFICATE OF SERVICE OF CLAIMANT’S CORRESPONDENCE, filed September 10, 2010 .....	16
CERTIFICATE OF SERVICE OF COMPACT DISC OF THE HEARING, filed September 1, 2010 .....	13
CERTIFICATE OF SERVICE OF DECISION AND ORDER PERSONALLY GIVEN TO CLAIMANT, filed November 9, 2010.....	68
CERTIFICATE OF SERVICE FOR MOTION TO ACCEPT LATE FILING OF ADDITIONAL DOCUMENTS TO IDAHO DEPARTMENT OF LABOR filed October 13, 2010 .....	54
CERTIFICATE OF SERVICE FOR NOTICE OF SUBMISSION OF DOCUMENTS TO IDAHO DEPARTMENT OF LABOR filed October 13, 2010.....	56
CERTIFICATE OF SERVICE FOR REQUEST FOR HEARING TO IDAHO DEPARTMENT OF LABOR, filed October 13, 2010 .....	55
CERTIFICATION, dated December 13, 2010 .....	74
CERTIFICATION OF RECORD, dated .....	75
DECISION OF APPEALS EXAMINER, date of mailing August 17, 2010 .....	1
DECISION AND ORDER, filed November 2, 2010 .....	61
EMPLOYER’S MOTION TO ACCEPT LATE FILING, filed October 8, 2010.....	43

EMPLOYER’S NOTICE OF SUBMISSION OF DOCUMENTS, filed October 8, 2010 .....	45
EMPLOYER’S NOTICE OF APPEAL, filed December 13, 2010 .....	70
EMPLOYER’S REQUEST FOR HEARING, filed October 8, 2010 .....	42
IDOL NOTICE OF APPEARANCE, filed September 8, 2010 .....	14
LIST OF EXHIBITS .....	i
NOTICE OF APPEAL, filed August 26, 2010 .....	7
NOTICE OF APPEARANCE AND REQUEST FOR NOTICE, filed August 26, 2010 .....	9
NOTICE OF COMPLETION, dated .....	76
NOTICE OF FILING OF APPEAL, filed August 31, 2010 .....	11
ORDER DENYING REQUESTS FOR A NEW HEARING, filed October 14, 2010 .....	57

## LIST OF EXHIBITS

Hearing Transcript taken on August 10, 2010, will be filed with the Supreme Court:

Exhibits admitted into record before Idaho Department of Labor

- |    |  |         |
|----|--|---------|
| 1. | Notice of Telephone Hearing, mailed July 23, 2010                    | 3 pages |
|    | <i>and</i> Revised Notice of Telephone Hearing, mailed July 26, 2010 | 3 pages |
| 2. | Important Information about your Hearing Read Carefully              | 2 pages |
| 3. | Discharge-Employer Response  | 4 pages |
| 4. | Eligibility Determination Unemployment Insurance Claim               | 2 pages |
| 5. | Employer letter regarding Claimant                                   | 8 pages |
| 6. | Employers Data   | 1 page  |





according to § 72-1366(5) of the Idaho Employment Security Law; and (2) whether the employer's account is properly chargeable for experience rating purposes for benefits paid to the claimant, according to § 72-1351(2)(a) of the Idaho Employment Security Law.

### **FINDINGS OF FACT**

**Additional facts or testimony may exist in this case. However, the Appeals Examiner outlines only those that are relevant to the decision and those based upon reliable evidence. Based on the exhibits and testimony in the record, the following facts are found:**

1. The claimant was hired in July 1995 and worked as the bookkeeper and receptionist.
2. On August 17, 2008, the claimant received a warning for playing video games at work. At that time, a firewall was put up so that employees could only access certain websites.
3. On June 8, 2009, the employer believed that the claimant called in sick and was at a water park when she was scheduled to work. The claimant denied that she was at a water park on June 8, 2009 and stated that the only time she went to the water park in 2009 was on the last day the park was open for the season.
4. For the last two years, the employer stated that the claimant was habitually tardy for work or absent and that he warned her repeatedly about her attendance. The claimant denied that she was warned about attendance. The claimant requested time off when she needed to miss work. The claimant's time off was approved.
5. The employer usually arrived early at the work site. The employer was not expected to be at work on Monday, June 21, 2010. The employer went to the worksite around 6:00 a.m. The employer does not think the claimant arrived to work until 9:30 a.m. The claimant does not recall being late on June 21, 2010.
6. In early June 2010, the employer hired an assistant for the claimant. The claimant did not have enough work to give the assistant but gave the assistant the work that was available. On June 22, 2010, the assistant said that the claimant was unwilling to train her.
7. The employer discharged the claimant for refusing to train the assistant, for being habitually late or absent from work, for not doing her job and for substandard behavior.
8. In the first four of the five calendar quarters preceding the one in which the claimant applied for benefits, this employer paid the claimant more wages than any other employer.

### **AUTHORITY**

Section 72-1351(2)(a) of the Idaho Employment Security Law provides in part that for experience rating purposes, no charge shall be made to the account of such covered employer with respect to benefits paid to a worker who terminated his services voluntarily without good cause attributable to such covered employer, or who had been discharged for misconduct in connection with such services.

Section 72-1366(5) of the Idaho Employment Security Law provides that a claimant shall be eligible for benefits provided unemployment is not due to the fact that the claimant left employment voluntarily without good cause, or was discharged for misconduct in connection with employment.

An employer may discharge an employee for any reason. However, only a discharge that is found to constitute misconduct for unemployment insurance purposes makes an employee ineligible for benefits.

Section 72-1366(5) of the Idaho Employment Security Law provides in pertinent part, that a claimant is ineligible for unemployment compensation benefits if he or she was discharged for misconduct in connection with employment. The issue is not whether the employer had reasonable grounds for discharging claimant, but rather whether the reasons for discharge constituted "misconduct" in connection with claimant's employment such that claimant can be denied unemployment benefits. The two issues are separate and distinct. Beaty vs. City of Idaho Falls, 110 Idaho 891, 719 P.2d 1151 (1986).

The burden of proving misconduct by a preponderance of the evidence falls strictly on the employer and, where the burden is not met, benefits must be awarded the claimant. Roll vs. City of Middleton, 105 Idaho 22, 665 P.2d 721 (1983); Parker vs. St. Maries Plywood, 101 Idaho 415, 614 P.2d 955 (1980); Hart vs. Deary High School, 126 Idaho 550, 552, 887 P.2d 1057, 1059 (1994). The Idaho Supreme Court has defined misconduct as a willful, intentional disregard of the employer's interest; a deliberate violation of the employer's rules; or a disregard of standards of behavior which the employer has a right to expect of his employees. John vs. S.H. Kress and Company, 78 Idaho 544, 307 P.2d 217 (1957).

For misconduct in standard-of-behavior cases, a two-pronged test has been delineated: (1) whether the employee's conduct fell below the standard of behavior expected by the employer; and (2) whether the employer's expectation was objectively reasonable in the particular case. However, the employer's expectations must be communicated to the employee. Davis vs. Howard O. Miller Co., 107 Idaho 1092, 695 P.2d 1231 (1984); Puckett vs. Idaho Department of Corrections, 107 Idaho 1022, 695 P.2d 407 (1985).

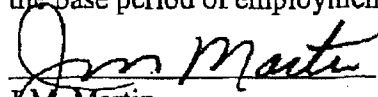
## CONCLUSIONS

Although an employer may discharge an employee for any reason, the employer carries the burden of illustrating by a preponderance of the evidence that the employee was discharged for employment related misconduct before a claimant can be denied unemployment insurance benefits. The Idaho Supreme Court has defined misconduct as a willful, intentional disregard of the employer's interest, a deliberate violation of the employer's rules, or a disregard from the standard of behavior which the employer has a right to expect. A "preponderance of the evidence" is evidence that, when weighed with that opposed to it, has more convincing force and from which results a greater probability of truth. If the evidence weighs evenly on both sides, the issue must be decided against the party bearing the burden of proof.

The employer cites several reasons for discharging the claimant, including that the claimant was habitually tardy or absent, that she played video games, and that she refused to train her assistant. As evidence the employer cites an absence in the summer of 2009 when he believed the claimant was at a water park and that the claimant was reprimanded for playing video games in 2008. Both allegations, even if true, are too far removed from the time of the discharge to be a material event. The employer also cites that the claimant was habitually tardy for the two years but the record is void of any formal warnings that the claimant received and the claimant provided credible testimony that any absences were approved by the employer. The claimant also disputes

that she refused to train the assistant and testified that she provided the assistant with as much work and training as she could.

It is important to note that the issue is not whether the employer had reasonable grounds to discharge the claimant but whether those grounds constitute misconduct. The employer may have believed that it was in its best interest to discharge the claimant. However, the employer has not demonstrated that the reasons given for the discharge would establish misconduct. Therefore, the claimant is eligible for benefits. Since this employer paid more wages than any other during the base period of employment, it must be held chargeable for experience rating purposes.

  
J.M. Martin  
Appeals Examiner

Date of Mailing August 17, 2010 Last Day To Appeal August 31, 2010

#### APPEAL RIGHTS

You have **FOURTEEN (14) DAYS FROM THE DATE OF MAILING** to file a written appeal with the Idaho Industrial Commission. The appeal must be mailed to:

Idaho Industrial Commission  
Judicial Division, IDOL Appeals  
P.O. Box 83720  
Boise, Idaho 83720-0041

Or delivered in person to:

Idaho Industrial Commission  
700 S Clearwater Lane  
Boise, ID 83712

Or transmitted by facsimile to:

(208) 332-7558.

If the appeal is mailed, it must be postmarked no later than the last day to appeal. An appeal filed by facsimile transmission must be received by the Commission by 5:00 p.m., Mountain Time, on the last day to appeal. A facsimile transmission received after 5:00 p.m. will be deemed received by the Commission on the next business day. A late appeal will be dismissed. Appeals filed by any means with the Appeals Bureau or a Department of Labor local office will not be accepted by the Commission. **TO EMPLOYERS WHO ARE INCORPORATED:** *If you file an appeal with the Idaho Industrial Commission, the appeal must be signed by a corporate officer or legal counsel licensed to practice in the State of Idaho and the signature must include the individual's title. The Commission will not consider appeals submitted by employer representatives who are not attorneys. If you request a hearing before the Commission or permission to file a legal brief, you must make these requests through legal counsel licensed to practice in the State of Idaho. Questions should be directed to the Idaho Industrial Commission, Unemployment Appeals, (208) 334-6024.*

If no appeal is filed, this decision will become final and cannot be changed. **TO CLAIMANT:** If this decision is changed, any benefits paid will be subject to repayment. If an appeal is filed, you should continue to report on your claim as long as you are unemployed.

APPEALS BUREAU  
IDAHO DEPARTMENT OF LABOR  
317 WEST MAIN STREET / BOISE, IDAHO 83735-0720  
(208) 332-3572 / (800) 621-4938  
FAX: (208) 334-6440

CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2010, a true and correct copy of  
**Decision of Appeals Examiner** was served by regular United States mail upon each of the  
following:

ANGELA S HOPKINS  
6904 BRENTWOOD DR  
BOISE ID 83709

PNEUMOTECH INC  
PO BOX 15496  
BOISE ID 83715-5496

R. Parker

Docket No 6616 yr 2010
[Docket](#) [Participants](#) [Exhibits](#) [Issues](#) [Calendar](#)  
[Schedule](#) [Determinations](#)  
**Appeal Information**

Get Docket Info

Clear

Must have both Docket No and Year to edit  
appeals.

Office 04 Meridian SSN [REDACTED] Appellant PartyEmployer [REDACTED]File Date 07/20/2010 Process Status Notice of Telephone Hearing

Save

**Summary Info Only(can not edit below):**
**6616-2010** ANGELA S HOPKINS PNEUMOTECH INC 4 07/20/2010
**Issues:****Hearing Schedule:**
020-Discharge; 021-  
Chargeability;
Aug 10 2010 2:30 PM MartinAppellant: [REDACTED] EmployerUpdated: 07/23/2010 By: mshieldsAngela S. Hopkins / Pneumotech, Inc.**Notes:**

2010-08-27 17:51:11-(ts) - Rec'd IC protest; had to mail disc of audio because it was too large for email;

2010-08-26 16:29:32-(ms) - recv'd fax NOA & reqt for an appeal from Bradley B Poole attorney for ER. Called to let him know it needs to go to IC. Bradley was gone fro the day so I left the message with the woman who answered the phone & gave her the fax # for IC. Sent to scanning;

2010-08-05 14:01:51-(eg) - Claimant brought in documents for the hearing. Gave to AE for review; she will get to Employer.;

2010-07-26 11:19:16-(tg) - Moved hearing from 8/9 @ 1:30 PK to 8/10 @ 2:30 JM and mailed revised NTH. Did not call parties original NTH mailed Friday and they would not have received it yet.;

BRADLEY B. POOLE, CHARTERED  
 ATTORNEY AT LAW  
 1110 North Five Mile Road  
 Boise, Idaho 83713  
 Telephone: (208) 322-5536  
 Facsimile: (208) 323-7660  
 email: [brad@bradpoolelaw.com](mailto:brad@bradpoolelaw.com)  
 ISB# 1662

*Attorney for Employer*

APPEALS BUREAU  
 IDAHO DEPARTMENT OF LABOR  
 317 WEST MAIN STREET / BOISE, IDAHO 83735-4938  
 FAX: (208) 334-6440

ANGELA S. HOPKINS,  
 SSN: [REDACTED]

) DOCKET NUMBER: 6616-2010

-vs-

) NOTICE OF APPEAL

PNEUMOTECH INC.,

Employer,

) FILED

and


) AUG 26 2010

IDAHO DEPARTMENT OF LABOR

) INDUSTRIAL COMMISSION

COMES NOW, PNEUMOTECH, INC., an Idaho Corporation, the "Employer",  
 by and through Bradley B. Poole, its attorney, and pursuant to §72-1368, Idaho Code, and  
 the Rules of Appellate Practices and Procedures, of the the Idaho Employment Security Law,  
 and appeals the Decision of Appeals Examiner in the above-entitled case, mailed  
 August 17, 2010, as to all issues of fact and law.

DATED this 26<sup>th</sup> day of August, 2010.

  
BRADLEY B. POOLE  
Attorney for Employer

### CERTIFICATE OF SERVICE

I hereby certify that on the 26<sup>th</sup> day of August, 2010, I served a true and correct copy of the within and foregoing document upon the following named below in the manner noted:

Angela S. Hopkins  
6904 Brentwood Dr.  
Boise, Idaho 83709

☒ U.S. Mail, postage prepaid  
☐ Hand-Delivered  
☐ Overnight Mail  
☐ Facsimile:

  
BRADLEY B. POOLE



BRADLEY B. POOLE, CHARTERED  
 ATTORNEY AT LAW  
 1110 North Five Mile Road  
 Boise, Idaho 83713  
 Telephone: (208) 322-5536  
 Facsimile: (208) 323-7660  
 email: [brad@bradpoolelaw.com](mailto:brad@bradpoolelaw.com)  
 ISB# 1662

Attorney for *Employer*

**APPEALS BUREAU  
 IDAHO DEPARTMENT OF LABOR  
 317 WEST MAIN STREET / BOISE, IDAHO 83735-4938  
 FAX: (208) 334-6440**

ANGELA S. HOPKINS,  
 SSN: [REDACTED]

Claimant,

-vs-

PNEUMOTECH INC.,

Employer,

and

IDAHO DEPARTMENT OF LABOR

DOCKET NUMBER: 6616-2010

NOTICE OF APPEARANCE  
 AND REQUEST FOR NOTICE

FILED


AUG 26 2010

INDUSTRIAL COMMISSION

COMES NOW, BRADLEY B. POOLE, and enters his appearance for  
 PNEUMOTECH INC., an Idaho corporation, (the "Employer"), in this matter and  
 hereby requests that all notices given or required to be given in this case, and in any  
 cases consolidated herewith, be given and served upon him as follows:

BRADLEY B. POOLE, CHARTERED  
ATTORNEY AT LAW  
1110 North Five Mile Road  
Boise, Idaho 83713  
Telephone: (208) 322-5536  
Facsimile: (208) 323-7660

DATED this 26<sup>th</sup> day of August, 2010.

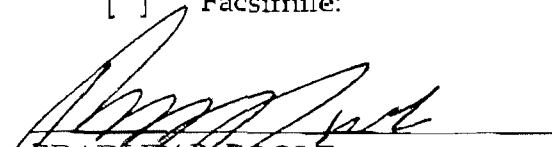
  
BRADLEY B. POOLE  
Attorney for Employer

### CERTIFICATE OF SERVICE

I hereby certify that on the 26<sup>th</sup> day of August, 2010, I served a true and correct copy of the within and foregoing document upon the following named below in the manner noted:

Angela S. Hopkins  
6904 Brentwood Dr.  
Boise, Idaho 83709

☒ U.S. Mail, postage prepaid  
☐ Hand-Delivered  
☐ Overnight Mail  
☐ Facsimile:

  
BRADLEY B. POOLE

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ANGELA S. HOPKINS,  
SSN [REDACTED]

IDOL # 6616-2010

[REDACTED]  
[REDACTED]  
[REDACTED]  
PNEUMOTECH INC.,

NOTICE OF  
FILING OF APPEAL

Employer,

FILED

and

AUG 31 2010

IDAHO DEPARTMENT OF LABOR.

INDUSTRIAL COMMISSION

**PLEASE TAKE NOTICE:** The Industrial Commission has received an appeal from a decision of an Appeals Examiner of the Idaho Department of Labor. A copy of the appeal is enclosed, along with a copy of the Commission's Rules of Appellate Practice and Procedure.

**PLEASE READ ALL THE RULES CAREFULLY**

The Industrial Commission promptly processes all unemployment appeals in the order received. In the mean time, you may want to visit our web site for more information:  
[www.iic.idaho.gov](http://www.iic.idaho.gov).

The Commission will make its decision in this appeal based on the record of the proceedings before the Appeals Examiner of the Idaho Department of Labor.

INDUSTRIAL COMMISSION  
UNEMPLOYMENT APPEALS DIVISION  
POST OFFICE BOX 83720  
BOISE IDAHO 83720-0041  
(208) 334-6024

*Calls Received by the Industrial Commission May Be Recorded*

## CERTIFICATE OF SERVICE

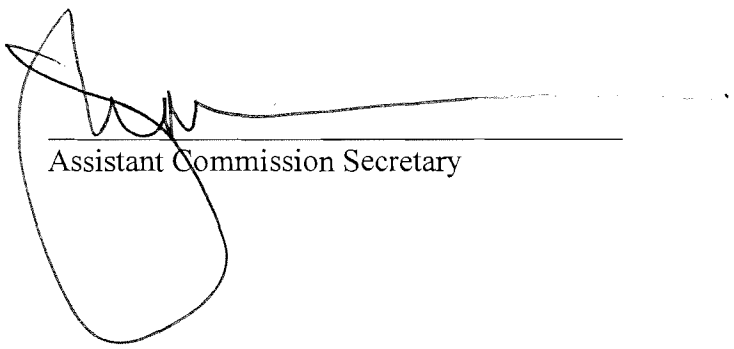
I hereby certify that on the 31 day of August, 2010 a true and correct copy of the **Notice of Filing of Appeal (and compact disc of the Hearing to follow)** was served by regular United States mail upon the following:

BRADLEY B POOLE  
ATTORNEY AT LAW  
1110 NORTH FIVE MILE ROAD  
BOISE ID 83713

ANGELA S HOPKINS  
6904 BRENTWOOD DR  
BOISE ID 83709

DEPUTY ATTORNEY GENERAL  
IDAHO DEPARTMENT OF LABOR  
***STATE HOUSE MAIL***  
317 W MAIN STREET  
BOISE ID 83735

mcs



---

Assistant Commission Secretary

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ANGELA S. HOPKINS,

Claimant,

vs.

PNEUMOTECH INC.,

Employer,

and

IDAHO DEPARTMENT OF LABOR.

IDOL # 6616-2010

FILED

SEP 01 2010

INDUSTRIAL COMMISSION

CERTIFICATE OF SERVICE

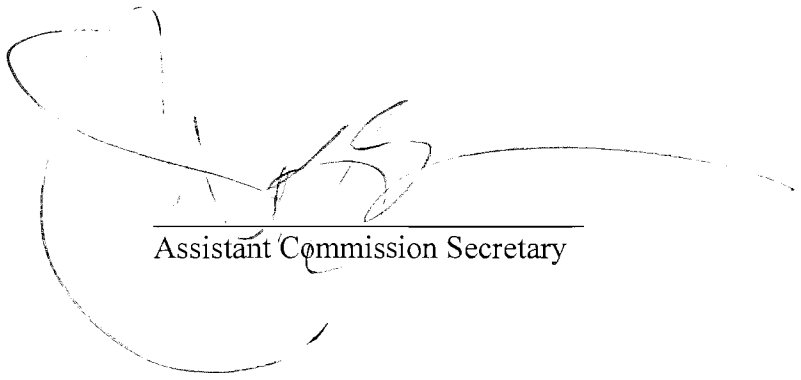
I hereby certify that on the 1 day of September, 2010 a true and correct copy of the **compact disc of the Hearing held on August 10, 2010** was served by regular United States mail upon the following:

DEPUTY ATTORNEY GENERAL  
IDAHO DEPARTMENT OF LABOR  
**STATE HOUSE MAIL**  
317 W MAIN STREET  
BOISE ID 83735

BRADLEY B POOLE  
ATTORNEY AT LAW  
1110 NORTH FIVE MILE ROAD  
BOISE ID 83713

ANGELA S HOPKINS  
6904 BRENTWOOD DR  
BOISE ID 83709

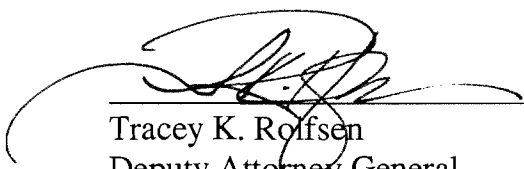
mcs

  
Assistant Commission Secretary

**CRAIG G. BLEDSOE – ISB# 3431**  
**TRACEY K. ROLFSEN – ISB# 4050**  
**CHERYL GEORGE – ISB# 4213**  
 Deputy Attorneys General  
 Idaho Department of Labor  
 317 W. Main Street  
 Boise, Idaho 83735  
 Telephone: (208) 332-3570 ext. 3148

14

DATED this 7<sup>th</sup> day of September, 2010.

  
\_\_\_\_\_  
Tracey K. Rolfsen  
Deputy Attorney General  
Attorney for the State of Idaho,  
Department of Labor

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a copy of the foregoing NOTICE OF APPEARANCE,  
was mailed, postage prepaid, this 7<sup>th</sup> day of September, 2010, to:

ANGELA S HOPKINS  
6904 BRENTWOOD DR  
BOISE ID 83709

BRADLEY B POOLE  
1110 NORTH FIVE MILE RD  
BOISE ID 83713

Karen Rash\_\_\_\_\_

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ANGELA S. HOPKINS, )  
 )  
 Claimant, )  
 )  
 vs. )  
 )  
 PNEUMOTECH INC., )  
 )  
 Employer, )  
 )  
 and )  
 )  
 IDAHO DEPARTMENT OF LABOR. )  
 \_\_\_\_\_ )

IDOL # 6616-2010

FILED

SEP 10 2010

INDUSTRIAL COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on the 10<sup>th</sup> day of September, 2010, a true and correct copy of **Claimant's correspondence, filed September 9, 2009**, was served by regular United States mail upon the following:

BRADLEY B POOLE  
1110 NORTH FIVE MILE ROAD  
BOISE ID 83713

DEPUTY ATTORNEY GENERAL  
IDAHO DEPARTMENT OF LABOR  
STATEHOUSE MAIL  
317 W MAIN ST  
BOISE ID 83738

ge

cc: Angela S. Hopkins

  
Assistant Commission Secretary



9-7-10

State of Idaho Industrial Commission

I am sending evidence for review on IDOL# 6616-2010 that was not allowed to be reviewed or discussed at the Id. Dept. of Labor review. During the phone hearing held on August 10, 2010 at 2:30pm, my previous employer Mr. Garth Sickles owner of Pneumotek Inc. stated to Judge Martin that he was having a sheriff serve me w/ papers that would bar me from showing the evidence that I had planned on using at that hearing. The judge based on his statement did not allow me to discuss what I had sent in. As of today's date, Sept. 7, 2010, I have not been served any papers, orders etc from a sheriff. I am re-sending my current earnings report for the period from Jan 1, 2010 to June 15, 2010 which shows

RECEIVED  
INDUSTRIAL COMMISSION

SEP - 9 A 10:56

that I worked & was pd. for  
40 hours a week. I am  
also re-sending a derogatory  
cartoon that was put up in  
clear view at Pneumotech on  
1/19/10 and taken down on  
6/1/10 as well as pictures of  
my work area taken on 6/22/10.  
I am sending copies of paperwork  
from the Id. Human Rights Commission.  
Since my discharge from Pneumotech  
Inc I have filed a complaint w/  
them & the papers were not  
available to be sent at the  
time of the appeal w/ the Id.  
Dept. of Labor

Sincerely

Angela S Hopkins  
6904 Brentwood Dr.  
Besse, Id. 83709  
208-919-0660

$$\text{days} \times \text{hrs/day} = \text{total}$$

For the P

## Current Earnings Report

For the Period From Jan 1, 2010 to Dec 31, 2010

Filter Criteria includes: 1) Employee IDs from ANH-101 to ANH-101. Report order is by Employee ID. Report is printed in Detail Format.

Employee ID Employee SS No	Date Referenc	Amount	Gross Medicare Vac-Taken VAC_Remain Medicare_ER	K401 State Sick-Take Sick FUTA_ER	Fed_Income Vac-Earn VAC_Accrue Purch/Reimb SUI_ER	Soc_Sec Sick-Earn VAC_Taken Soc_Sec_ER	Pay Type	Pay Hrs	Pay Amt
ANH-101 Angela S. Hopkins	1/4/10 20059	961.47	1,222.00 -17.72	-60.00	-107.05	-75.76	Regular	104.00	1,222.00
<p>pay period 12/15/09 - 12/31/09 (13 days x 8 hrs. = 104)</p>									
			-17.72	-9.78	-14.66	-75.76			
ANH-101 Angela S. Hopkins	1/15/10 20111	781.64	940.00 -13.63	-38.00	-48.45	-58.28	Regular	80.00	940.00
<p>10 days in pay period 1/1/10 - 1/14/10 10 days x 8 = 80 hrs.</p>									
			-13.63	-7.52	-11.28	-58.28			
ANH-101 Angela S. Hopkins	2/1/10 20117	847.35	1,034.00 -14.99	-45.00	-62.55	-64.11	Regular	88.00	1,034.00
<p>11 days in pay period 1/5/10 - 1/31/10 11 days x 8 = 88 hrs.</p>									
			-14.99	-8.27	-12.41	-64.11			
ANH-101 Angela S. Hopkins	2/15/10 20161	781.64	940.00 -13.63	-38.00	-48.45	-58.28	Regular	80.00	940.00
<p>10 days in pay period 2/1/10 - 2/14/10 10 days x 8 = 80 hrs.</p>									
			-13.63	-7.52	-11.28	-58.28			
ANH-101 Angela S. Hopkins	3/1/10 20166	781.64	940.00 -13.63	-38.00	-48.45	-58.28	Regular	80.00	940.00
<p>10 days in pay period 2/15/10 - 2/28/10 10 days x 8 = 80 hrs.</p>									
			-13.63	-7.52	-11.28	-58.28			
ANH-101 Angela S. Hopkins	3/15/10 20212	781.64	940.00 -13.63	-38.00	-48.45	-58.28	Regular	80.00	940.00
<p>10 days in pay period 3/1/10 - 3/14/10 10 days x 8 = 80 hrs.</p>									
			-13.63	-7.52	-11.28	-58.28			
		4,935.38	6,016.00		-363.40	-372.99	Regular	512.00	6,016.00

Pneumotech Inc.

## Current Earnings Report

For the Period From Jan 1, 2010 to Dec 31, 2010

Filter Criteria includes: 1) Employee IDs from ANH-101 to ANH-101. Report order is by Employee ID. Report is printed in Detail Format.

Employee ID Employee SS No	Date Referenc	Amount	Gross Medicare Vac-Taken VAC_Remain Medicare_ER	K401 State Sick-Take Sick FUTA_ER	Fed_Income Vac-Earn VAC_Accrue Purch/Reimb SUI_ER	Soc_Sec Sick-Earn VAC_Taken Soc_Sec_ER	Pay Type	Pay Hrs	Pay Amt
Total 1/1/10 thru 3/31/1			-87.23	-257.00					
			-87.23	-48.13	-72.19	-372.99			
ANH-101 Angela S. Hopkins [REDACTED]	4/1/10 20217	977.77	1,222.00 -17.72	-60.00	-90.75	-75.76	Regular	104.00	1,222.00
13 days in pay period 3/15/10 - 3/31/10 13 days x 8 hrs./day = 104 hrs			-17.72	-7.87	-14.66	-75.76			
ANH-101 Angela S. Hopkins [REDACTED]	4/15/10 20260	781.64	940.00 -13.63	-38.00	-48.45	-58.28	Regular	80.00	940.00
10 days in pay period 4/1/10 - 4/14/10 10 days x 8 hrs./day = 80 hrs			-13.63		-11.28	-58.28			
ANH-101 Angela S. Hopkins [REDACTED]	5/3/10 20266	912.05	1,128.00 -16.36	-53.00	-76.65	-69.94	Regular	96.00	1,128.00
12 days in pay period 4/15/10 - 4/30/10 12 days x 8 hrs./day = 96 hrs			-16.36		-13.54	-69.94			
ANH-101 Angela S. Hopkins [REDACTED]	5/17/10 1265	781.64	940.00 -13.63	-38.00	-48.45	-58.28	Regular	80.00	940.00
10 days in pay period 5/1/10 - 5/14/10 10 days x 8 hrs./day = 80 hrs			-13.63		-11.28	-58.28			
ANH-101 Angela S. Hopkins 519-82-2300 [REDACTED]	6/1/10 20301	847.35	1,034.00 -14.99	-45.00	-62.55	-64.11	Regular	88.00	1,034.00
pay period 5/15/10 - 5/31/10 11 days x 8 hrs./day = 88 hrs			-14.99		-12.41	-64.11			
ANH-101 Angela S. Hopkins	6/15/10 20305	781.64	940.00 -13.63	-38.00	-48.45	-58.28	Regular	80.00	940
10 days in pay period 6/1/10 - 6/14/10 10 days x 8 hrs./day = 80 hrs									

Filter Criteria includes: 1) Employee IDs from ANH-101 to ANH-101. Report order is by Employee ID. Report is printed in Detail Format.

— 2

Employee ID Employee SS No	Date Referenc	Amount	Gross Medicare Vac-Taken VAC_Remain Medicare_ER	K401 State Sick-Take Sick FUTA_ER	Fed_Income Vac-Earn VAC_Accrue Purch/Reimb SUI_ER	Soc_Sec Sick-Earn VAC_Taken Soc_Sec_ER	Pay Type	Pay Hrs	Pay Amt
					-11.28				
Total 4/1/10 thru 6/30/1		5,082.09	6,204.00 -89.96	-272.00	-375.30	-384.65	Regular	528.00	6,204.00
			-89.96	-7.87	-74.45	-384.65			
Report Date Total for Angela S. Hopkins		10,017.47	12,220.00 -177.19	-529.00	-738.70	-757.64	Regular	1,040.00	12,220.00
			-177.19	-56.00	-146.64	-757.64			
YTD Total for Angela S. Hopkins		10,017.47	12,220.00 -177.19	-529.00	-738.70	-757.64	Regular	1,040.00	12,220.00
			-177.19	-56.00	-146.64	-757.64			
Summary Total 1/1/10 thru 3/31/10		4,935.38	6,016.00 -87.23	-257.00	-363.40	-372.99	Regular	512.00	6,016.00
			-87.23	-48.13	-72.19	-372.99			
Summary Total 4/1/10 thru 6/30/10		5,082.09	6,204.00 -89.96	-272.00	-375.30	-384.65	Regular	528.00	6,204.00
			-89.96	-7.87	-74.45	-384.65			

*days x hrs/day = total*

Pneumotech Inc.

## Current Earnings Report

For the Period From Jan 1, 2010 to Dec 31, 2010

Filter Criteria includes: 1) Employee IDs from ANH-101 to ANH-101. Report order is by Employee ID. Report is printed in Detail Format.

Employee ID Employee SS No	Date Referenc	Amount	Gross Medicare Vac-Taken VAC_Remain Medicare_ER	K401 State Sick-Take Sick FUTA_ER	Fed_Income Vac-Earn VAC_Accrue Purch/Reimb SUI_ER	Soc_Sec Sick-Earn VAC_Taken Soc_Sec_ER	Pay Type	Pay Hrs	Pay Amt
ANH-101 Angela S. Hopkins 510-82-2200	1/4/10 20059	961.47	1,222.00 -17.72	-60.00	-107.05	-75.76	Regular	104.00	1,222.00
<i>13 days in pay period 12/15/09 - 12/31/09</i> <i>(13 days x 8 hrs. = 104)</i>									
ANH-101 Angela S. Hopkins	1/15/10 20111		940.00 -13.63	-38.00	-48.45	-58.28	Regular	80.00	940.00
<i>10 days in pay period 1/1/10 - 1/14/10</i> <i>10 days x 8 = 80 hrs.</i>									
ANH-101 Angela S. Hopkins	2/1/10 20117	847.35	1,034.00 -14.99	-45.00	-62.55	-64.11	Regular	88.00	1,034.00
<i>11 days in pay period 1/15/10 - 1/31/10</i> <i>11 days x 8 = 88 hrs.</i>									
ANH-101 Angela S. Hopkins	2/15/10 20161	781.64	940.00 -13.63	-38.00	-48.45	-58.28	Regular	80.00	940.00
<i>10 days in pay period 2/1/10 - 2/14/10</i> <i>10 days x 8 = 80 hrs.</i>									
ANH-101 Angela S. Hopkins	3/1/10 20166	781.64	940.00 -13.63	-38.00	-48.45	-58.28	Regular	80.00	940.00
<i>10 days in pay period 2/15/10 - 2/28/10</i> <i>10 days x 8 = 80 hrs.</i>									
ANH-101 Angela S. Hopkins	3/15/10 20212	781.64	940.00 -13.63	-38.00	-48.45	-58.28	Regular	80.00	940.00
<i>10 days in pay period 3/1/10 - 3/14/10</i> <i>10 days x 8 = 80 hrs.</i>									
		4,935.38	6,016.00		-363.40	-372.99	Regular	512.00	6,016.00

Pneumotech Inc.

## Current Earnings Report

For the Period From Jan 1, 2010 to Dec 31, 2010

Filter Criteria includes: 1) Employee IDs from ANH-101 to ANH-101. Report order is by Employee ID. Report is printed in Detail Format.

Employee ID Employee SS No	Date Referenc	Amount	Gross Medicare Vac-Taken VAC_Remain Medicare_ER	K401 State Sick-Take Sick FUTA_ER	Fed_Income Vac-Earn VAC_Accrue Purch/Reimb SUI_ER	Soc_Sec Sick-Earn VAC_Taken Soc_Sec_ER	Pay Type	Pay Hrs	Pay Amt
Total 1/1/10 thru 3/31/1			-87.23	-257.00					
			-87.23	-48.13	-72.19	-372.99			
ANH-101 Angela S. Hopkins	4/1/10 20217	977.77	1,222.00 -17.72	-60.00	-90.75	-75.76	Regular	104.00	1,222.00
13 days in pay period 3/15/10 - 3/31/10 13 days x 8 hrs./day = 104 hrs			-17.72	-7.87	-14.66	-75.76			
ANH-101 Angela S. Hopkins	4/15/10 20260	781.64	940.00 -13.63	-38.00	-48.45	-58.28	Regular	80.00	940.00
10 days in pay period 4/1/10 - 4/14/10 10 days x 8 hrs./day = 80 hrs			-13.63	-11.28	-58.28				
ANH-101 Angela S. Hopkins	5/3/10 20266	912.05	1,128.00 -16.36	-53.00	-76.65	-69.94	Regular	96.00	1,128.00
12 days in pay period 4/15/10 - 4/30/10 12 days x 8 hrs./day = 96 hrs			-16.36	-13.54	-69.94				
ANH-101 Angela S. Hopkins	5/17/10 1265	781.64	940.00 -13.63	-38.00	-48.45	-58.28	Regular	80.00	940.00
10 days in pay period 5/1/10 - 5/14/10 10 days x 8 hrs./day = 80 hrs			-13.63	-11.28	-58.28				
ANH-101 Angela S. Hopkins	6/1/10 20301	847.35	1,034.00 -14.99	-45.00	-62.55	-64.11	Regular	88.00	1,034.00
11 days in pay period 5/1/10 - 5/31/10 11 days x 8 hrs./day = 88 hrs			-14.99	-12.41	-64.11				
ANH-101 Angela S. Hopkins	6/15/10 20305	781.64	940.00 -13.63	-38.00	-48.45	-58.28	Regular	80.00	940.00
10 days in pay period									

**Pneumotech Inc.**

## Current Earnings Report

For the Period From Jan 1, 2010 to Dec 31, 2010

Filter Criteria includes: 1) Employee IDs from ANH-101 to ANH-101. Report order is by Employee ID. Report is printed in Detail Format.

Employee ID Employee SS No	Date Referenc	Amount	Gross Medicare Vac-Taken VAC_Remain Medicare_ER	K401 State Sick-Take Sick FUTA_ER	Fed_Income Vac-Earn VAC_Accrue Purch/Reimb SUI_ER	Soc_Sec Sick-Earn VAC_Taken Soc_Sec_ER	Pay Type	Pay Hrs	Pay Amt
<hr/>									
					-11.28				
		5,082.09	6,204.00 -89.96	-272.00	-375.30	-384.65	Regular	528.00	6,204.00
Total 4/1/10 thru 6/30/1			-89.96	-7.87	-74.45	-384.65			
		10,017.47	12,220.00 -177.19	-529.00	-738.70	-757.64	Regular	1,040.00	12,220.00
Report Date Total for Angela S. Hopkins			-177.19	-56.00	-146.64	-757.64			
		10,017.47	12,220.00 -177.19	-529.00	-738.70	-757.64	Regular	1,040.00	12,220.00
YTD Total for Angela S. Hopkins			-177.19	-56.00	-146.64	-757.64			
		4,935.38	6,016.00 -87.23	-257.00	-363.40	-372.99	Regular	512.00	6,016.00
Summary Total 1/1/10 thru 3/31/10			-87.23	-48.13	-72.19	-372.99			
		5,082.09	6,204.00 -89.96	-272.00	-375.30	-384.65	Regular	528.00	6,204.00
Summary Total 4/1/10 thru 6/30/10			-89.96	-7.87	-74.45	-384.65			

128



**Pneumotech Inc.**

## Current Earnings Report

For the Period From Jan 1, 2010 to Dec 31, 2010

Filter Criteria includes: 1) Employee IDs from ANH-101 to ANH-101 Report order is by Employee ID. Report is printed in Detail Format.

Employee ID Employee SS No	Date Referenc	Amount	Gross Medicare Vac-Taken VAC_Remain Medicare_ER	K401 State Sick-Take Sick FUTA_ER	Fed_Income Vac-Earn VAC_Accrue Purch/Reimb SUI_ER	Soc_Sec Sick-Earn VAC_Taken Soc_Sec_ER	Pay Type	Pay Hrs	Pay Amt
Report Date Final Total 1/1/10 thru 12/31/10		10,017.47	12,220.00 -177.19	-529.00	-738.70	-757.64	Regular	1,040.00	12,220.00
			-177.19	-56.00	-146.64	-757.64			
Final YTD Total		10,017.47	12,220.00 -177.19	-529.00	-738.70	-757.64	Regular	1,040.00	12,220.00
			-177.19	-56.00	-146.64	-757.64			

52

Angela

---

From: <2089190660@mms.mycricket.com>  
To: <angie@pneumotech.net>  
Sent: Tuesday, June 15, 2010 3:27 AM



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No virus found in this incoming message.

Checked by AVG - [www.avg.com](http://www.avg.com)

Version: 8.5.424 / Virus Database: 271.1.1/2938 - Release Date: 06/14/10 18:35:00

picture taken on 1/19/10 - taken down on 6/1/10

26

6/15/2010



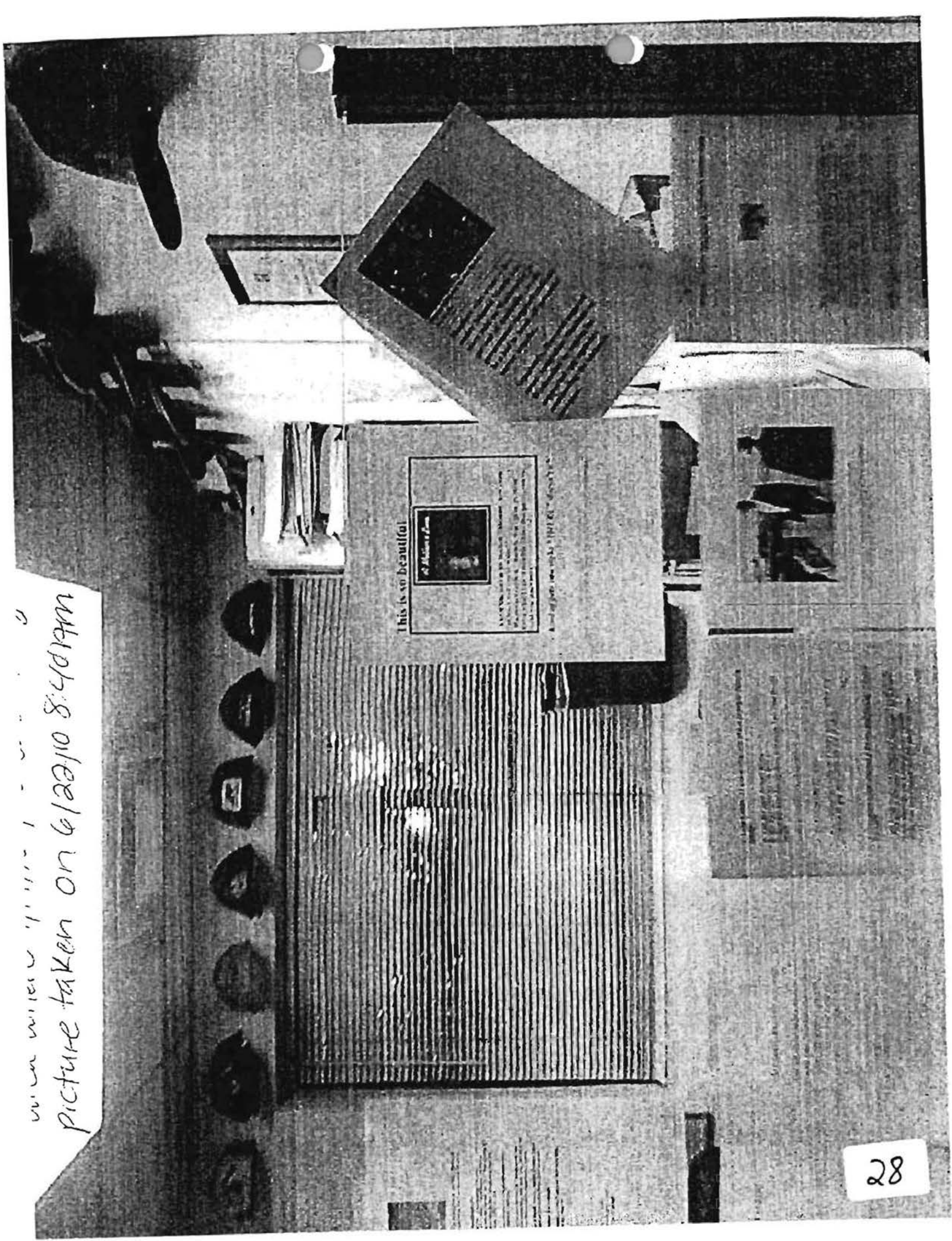
*Either this gets filled  
in the next 10 seconds  
or someone's gonna  
be eating dogfood for  
the rest of his career.*

*Oh, and give that kid  
a bath. He stinks.*

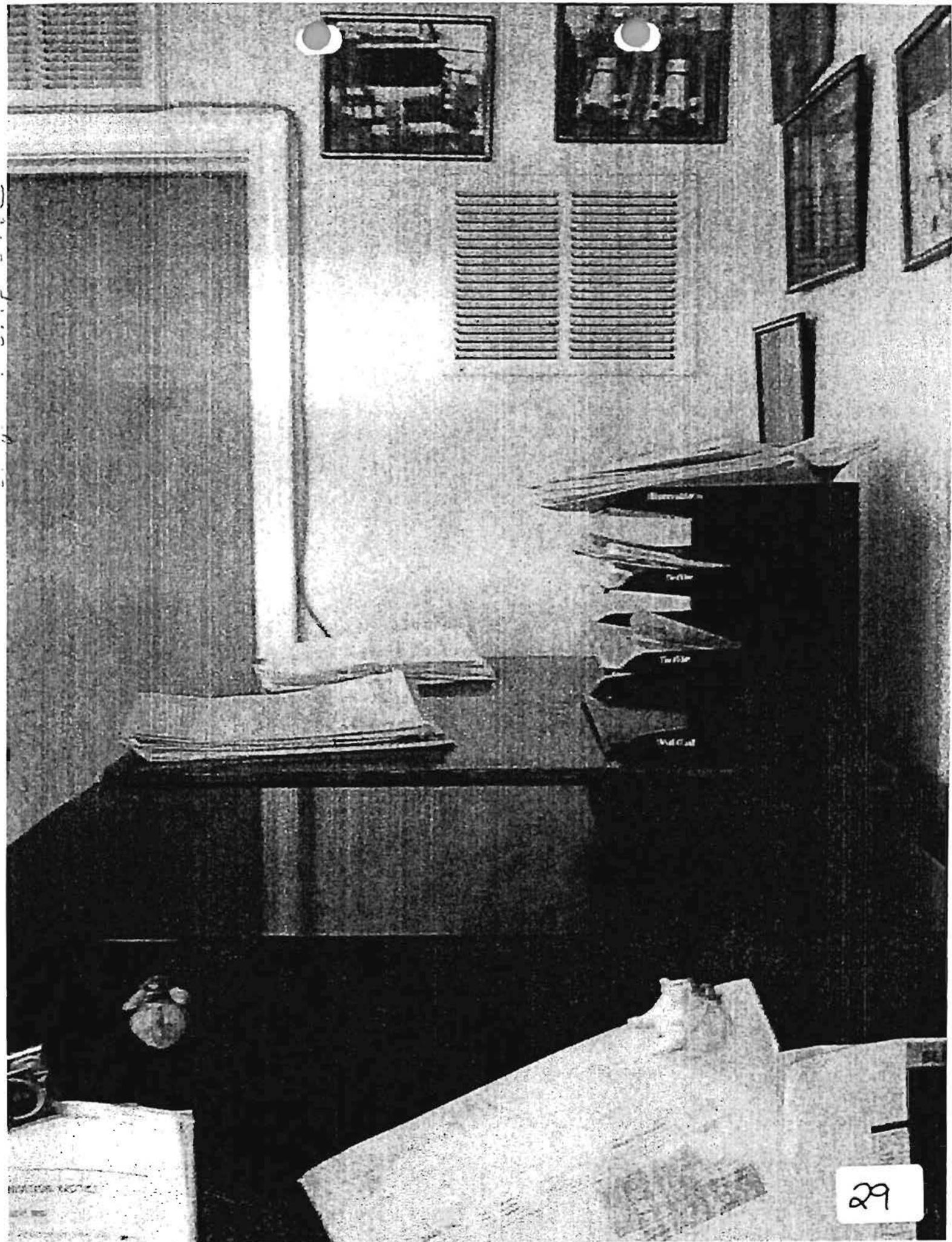
**ON SCREEN SHE WAS THE IDOL OF MILLIONS.  
OFF SCREEN SHE WAS, PREDICTABLY,  
JUST A BITCH.**

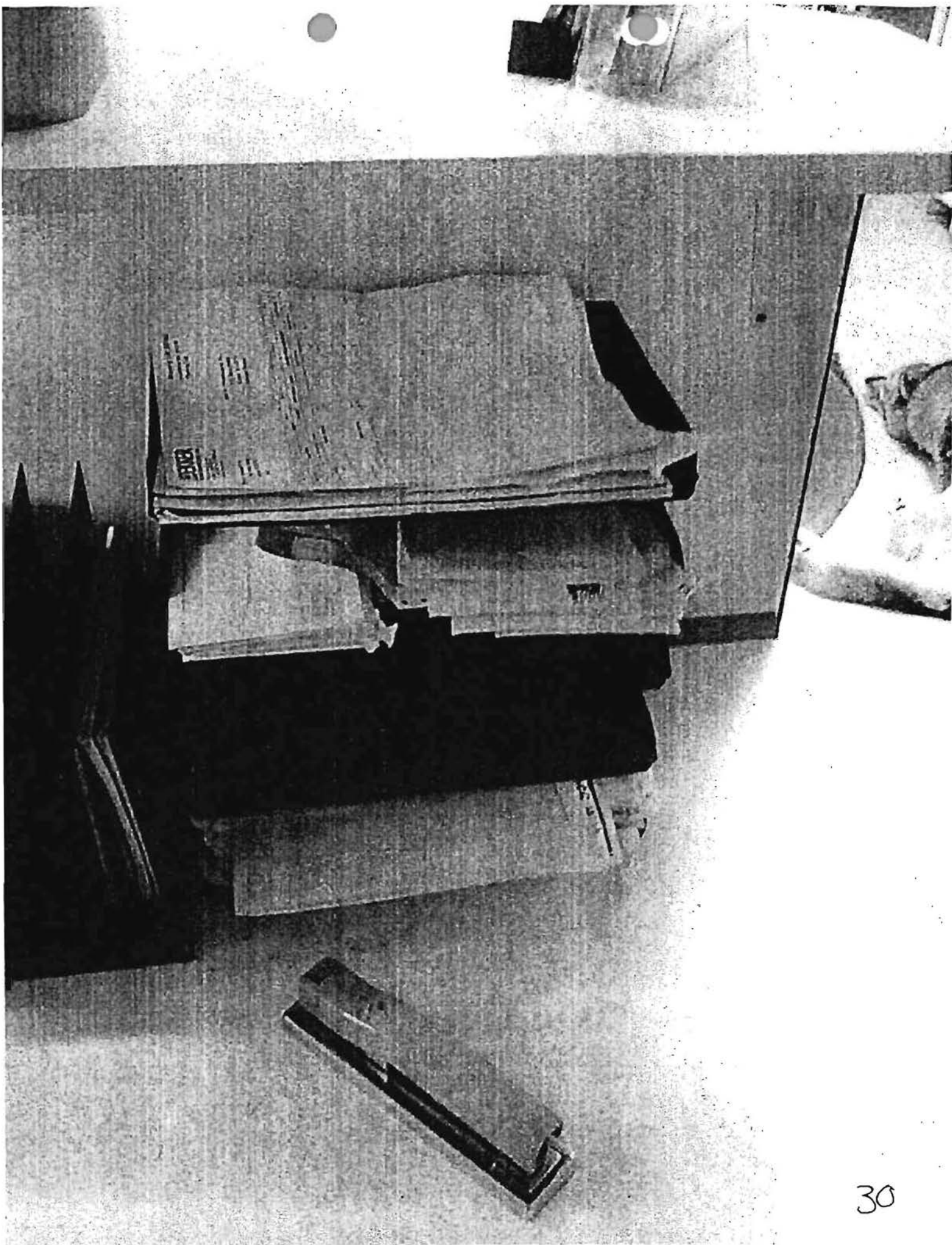


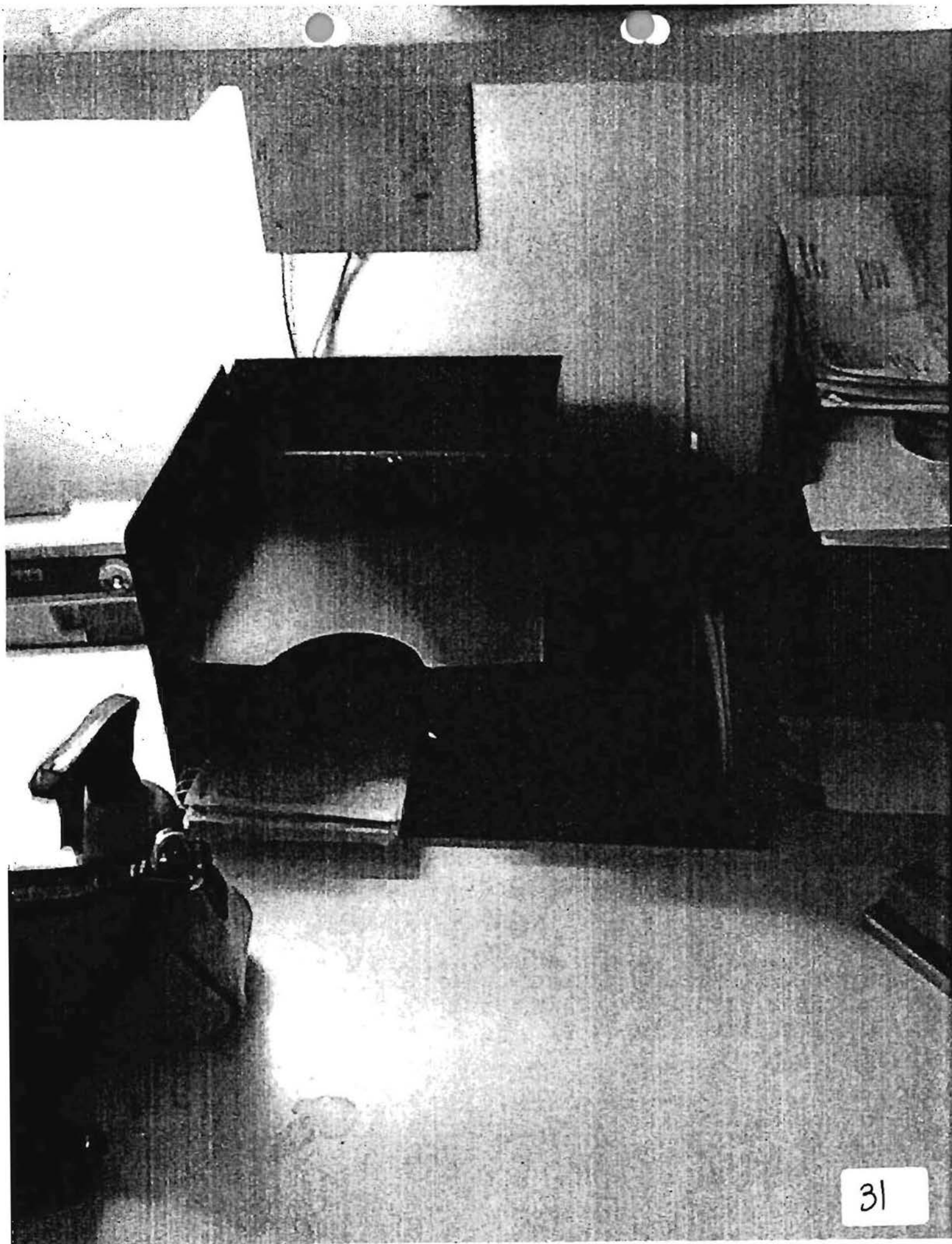
view view 11/11/11 1 - 11/11/11 0  
picture taken on 6/22/10 8:40 PM



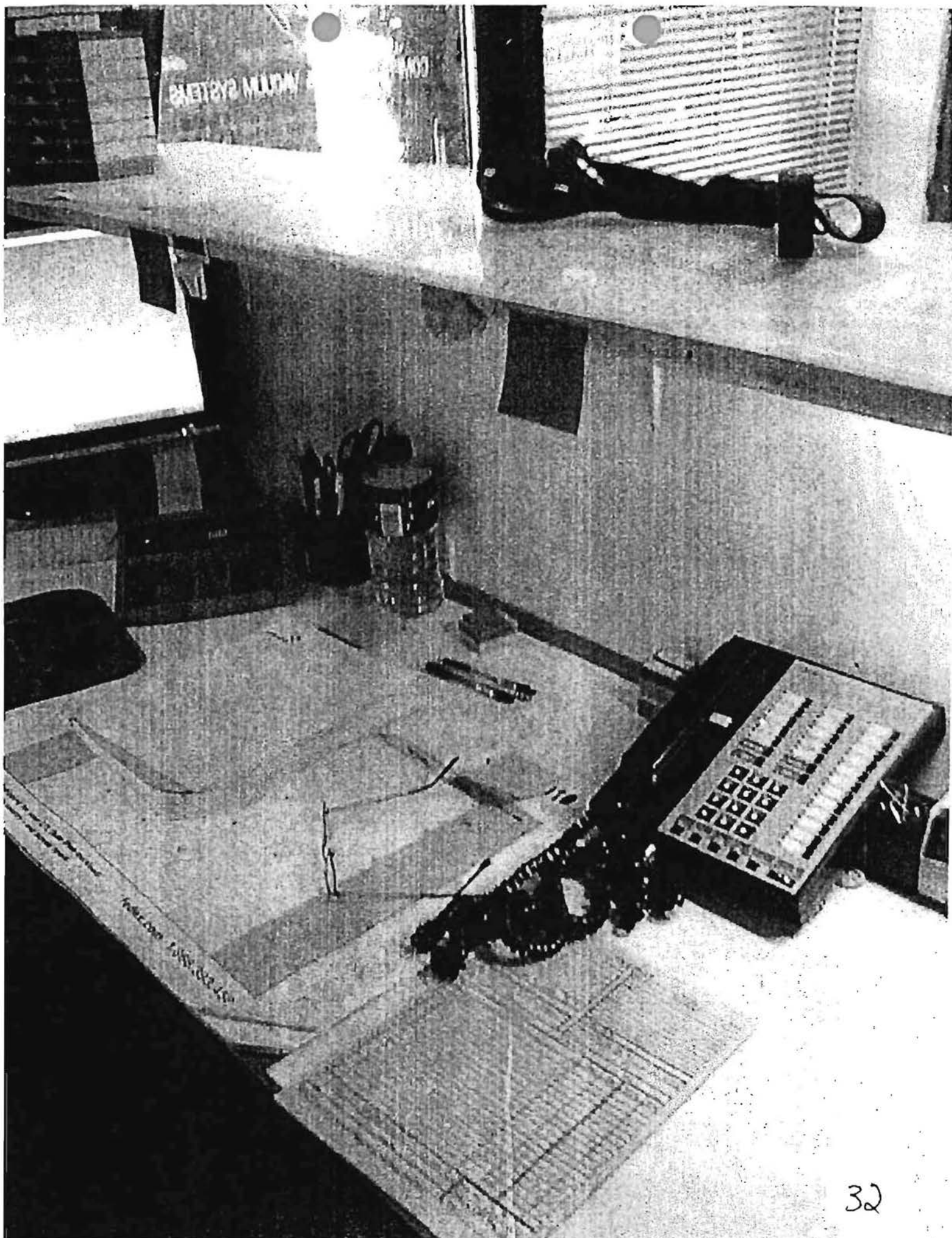




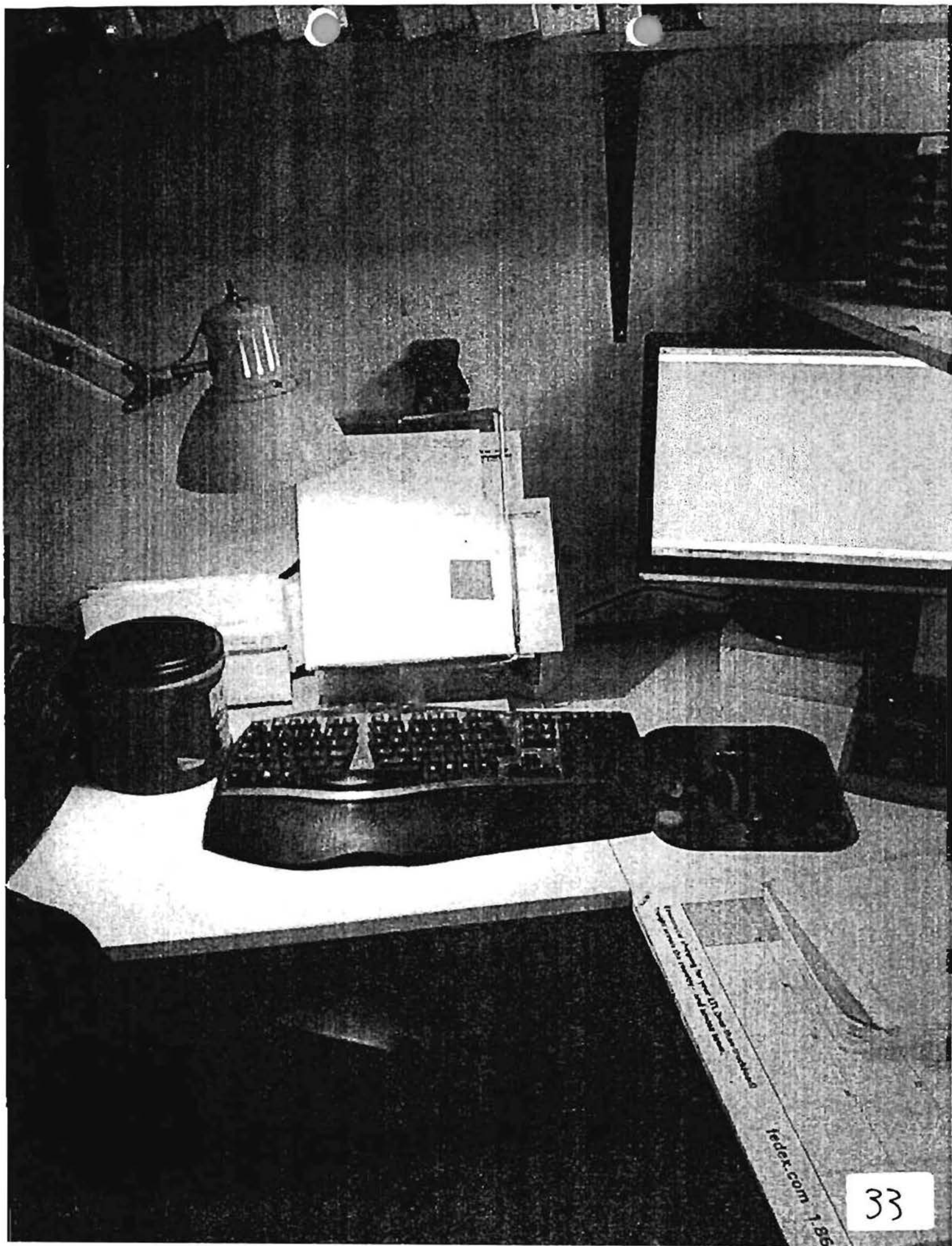












C. L. "Butch" Otter, Governor



Pamela Parks, Administrator

COMMISSIONERS:  
Estella Zamora, President  
Hyoung Pak, Vice President  
Robert Bolinder  
Ruthie Johnson  
Joe B. McNeal  
Sheila Olsen  
Megan Ronk  
Brian Scigliano  
Andrea Wassner

317 W. Main Street  
Boise, ID 83735-0660  
Tel 208-334-2873  
Fax 208-334-2664

[www.humanrights.idaho.gov](http://www.humanrights.idaho.gov)

## IDAHO HUMAN RIGHTS COMMISSION

[inquiry@labor.idaho.gov](mailto:inquiry@labor.idaho.gov)

August 9, 2010

Department of Labor  
Roger Madsen, Director

Angela S. Hopkins  
6904 Brentwood Drive  
Boise, ID 83709

Dear Ms. Hopkins,

Enclosed please find a charge of discrimination which was drafted at your request based on the information you provided. Also enclosed are the Release of Information and Notice to Keep Records forms, which are applicable to your complaint. In order for the Idaho Human Rights Commission to proceed with your case, you must:

1. Review, sign and date the complaint where indicated.
2. Review, sign and date all of the release forms enclosed.
3. Return the original complaint and release forms to us in the enclosed envelope.
4. You may retain the copies provided for your records.

The law requires you to file an administrative complaint with the Idaho Human Rights Commission within one year of the occurrence of the alleged discriminatory act. A lawsuit may not be filed until the administrative case is closed and your right to sue notice is issued, and then must be filed within 90 days of the closure. Failure to meet these timelines may cause you to lose important rights, so we urge you to complete the initial administrative filing steps as soon as possible.

Please be advised that the files of the Commission are not open to the public at large. However, this case file is available to both parties during regular business hours with the exception of any notes or documents regarding confidential negotiations created during the course of mediation.

We request that you notify us of any change in your address or telephone number, and to inform us of any extended absences from your present address. This is very important, since your complaint may be dismissed if we are unable to contact you during its processing.

We also request that if possible, you supply the name and phone number of a contact person in case you cannot be reached in the future. Thank you.

If you have any questions, feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Cara Z. Weech".

Cara Z. Weech  
Civil Rights Investigator

CZW:sca  
Enclosure

**CHARGE OF DISCRIMINATION**

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):



FEPA



EEOC

**Idaho Human Rights Commission**

and EEOC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)

**Ms. Angela S. Hopkins**

Home Phone (Incl. Area Code)

**(208) 919-0660**

Date of Birth

Street Address

City, State and ZIP Code

**6904 Brentwood Drive, Boise, ID 83709**

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

**PNEUMOTECH, INC.**

No. Employees, Members

**Under 15**

Phone No. (Include Area Code)

**(208) 362-4721**

Street Address

City, State and ZIP Code

**4652 Henry Street, Suite A, Boise, ID 83709**

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)



RACE



COLOR



SEX



RELIGION



NATIONAL ORIGIN



RETALIATION



AGE



DISABILITY



GENETIC INFORMATION



OTHER (Specify)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

**01-18-2010****06-22-2010**

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

**\*\*\*SEE ATTACHED\*\*\***

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

Date

Charging Party Signature

NOTARY - When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE  
(month, day, year)

35

THE PARTICULARS ARE:

**I. Complainant's Statement of Harm:**

I was subjected to harassment and less favorable terms and conditions of my employment, and I was discharged.

**II. Respondent's Reason for Adverse Action:**

No reason has been given for the harassment. I was told that my male coworker deserved a longer lunch break. When I was discharged, my supervisor told me he was tired of the games. He has since informed the Idaho Department of Labor that I was discharged due to performance, causing disruption, and attendance.

**III. Complainant's Statement of Discrimination:** I believe I have been discriminated against based upon my sex, female. In support of this statement, I offer the following facts:

A. In July 1995, I began working for Respondent as an administrative assistant. Until the six months of my employment, there were no concerns about my job performance. In fact, in 2009, I received a \$2.00 per hour increase in my wages. My supervisor was Respondent's owner, Garth Sickles.

B. On or about January 15, 2010, I complained to Mr. Sickles that I believed he was directing me to embezzle money from the company. I also complained that employees were not being paid for overtime.

C. Since my complaints, Mr. Sickles began a campaign of harassment that was targeted at the fact that I am female. Examples of this harassment include the following:

- On January 19, 2010, Mr. Sickles posted a cartoon in the office area for all to see. The cartoon was of Lassie the dog, sitting in a director's chair, with a martini glass in her paw. In the speech bubble it says, "Either this gets filled in the next 10 seconds or someone's gonna be eating dog food for the rest of his career. Oh, and give that kid a bath. He stinks." The caption under the cartoon reads, "On screen she was the idol of millions. Off screen she was, predictably, just a bitch."
- From January 15, 2010 until my discharge of June 22, 2010, Mr. Sickles would make statements to others referring to me as a "bitch" or a "cunt." He would also blame me for mistakes, saying, "All females are bitches. The bitch messed up again," or "That worthless bitch up front . . ." These comments would occur at least once every other day and always within my hearing.

D. In addition to the harassment, Mr. Sickles began to subject me to less favorable terms and conditions. Specifically, I was no longer able to take a full lunch hour. He would only allow me ten minutes. However, my male coworkers retained an hour lunch

break. When I asked Mr. Sickles about this, he simply stated that he thought my male coworkers deserved the hour break.

E. On June 22, 2010, Mr. Sickles approached me and said, "I'm tired of the games; pack your stuff and leave." He then walked away. I asked him what he meant, but he did not respond. Since that date, Mr. Sickles has informed the Idaho Department of Labor that I was discharged due to performance, causing disruption, and attendance. I deny his allegations.

F. Respondent employs at least 5 employees.

I believe the practices of the above-named Respondent are in violation of:

- ☒ (X) Title 67, Chapter 59 of the Idaho Code
- ☐ ( ) Title 44, Chapter 17 of the Idaho Code
- ☐ ( ) Title VII of the Civil Rights Act of 1964, as amended
- ☐ ( ) Age Discrimination in the Employment Act of 1967 (ADEA)
- ☐ ( ) Americans with Disabilities Act (ADA)

**IDAHO HUMAN RIGHTS  
COMMISSION**

317 W. Main St.  
P.O. Box 83720  
Boise, Idaho 83735-0660  
(208) 334-2873

---

RELEASE OF INFORMATION

---

IN THE MATTER OF:

**ANGELA HOPKINS,**  
COMPLAINANT

v.

**PNEUMOTECH, INC.,**  
RESPONDENT

I hereby authorize my employer and any of my former employers to furnish the Idaho Human Rights Commission with records of my services, my reason for leaving their employment, together with all other information they may have concerning me, whether on record or not. Also, I authorize that all other persons or organizations possessing information necessary to a full evaluation of my qualifications or record should, if requested, furnish such information to the Idaho Human Rights Commission. I hereby release my employer and any of my former employers, the other persons and organizations so indicated, and the Idaho Human Rights Commission from all liability for any damages whatsoever in furnishing and obtaining said record.

COPY  
SIGNATURE OF COMPLAINANT

\_\_\_\_\_  
DATE

---

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**IDAHO HUMAN RIGHTS  
COMMISSION**

317 W. Main St.  
P.O. Box 83720  
Boise, Idaho 83735-0660  
(208) 334-2873

---

**NOTICE TO KEEP RECORDS**

---

IN THE MATTER OF:

**ANGELA HOPKINS,  
COMPLAINANT**

v.

**PNEUMOTECH, INC.,  
RESPONDENT**

I understand that if I lose a job because of discrimination, I may be entitled to damages for loss of back pay. However, I also understand that I have a duty to minimize these damages by seeking comparable employment until my complaint is settled. I will keep records of all attempts to seek comparable employment. These records will contain the name of the agency where I sought employment, the date I applied, the employer and the position for which I applied. I will also keep records of all wages I have earned from such employers, and of unemployment insurance payments collected, until this case is settled, by writing down the amounts I have earned from each employer or payment from the State. In this regard, I will keep all check stubs, withholding statements, income tax returns, or any other records I receive concerning these wages. I will turn these records over to the Idaho Human Rights Commission upon their request so that they may pursue my claim for employment discrimination.

*COPY*

---

SIGNATURE OF COMPLAINANT

---

DATE

C. L. "Butch" Otter, Governor



COMMISSIONERS:

*Estella Zamora, President*  
*Hyong Pak, Vice President*  
*Robert Bolinder*  
*Ruthie Johnson*  
*Joe B. McNeal*  
*Sheila Olsen*  
*Megan Ronk*  
*Brian Scigliano*  
*Andrea Wassner*

*Department of Labor*  
*Roger Madsen, Director*

*Pamela Parks, Administrator*

317 W. Main Street  
Boise, ID 83735-0660  
Tel 208-334-2873  
Fax 208-334-2664

[www.humanrights.idaho.gov](http://www.humanrights.idaho.gov)

[inquiry@labor.idaho.gov](mailto:inquiry@labor.idaho.gov)

IDAHO HUMAN RIGHTS COMMISSION

August 20, 2010

Angela S. Hopkins  
6904 Brentwood Drive  
Boise, ID 83709

Re: Angela S. Hopkins vs. Pneumotech, Inc.  
Complaint Nos. E-0810-078; 38C-2010-00479

Dear Ms. Hopkins,

Please be advised that the above referenced matter has been assigned to Senior Civil Rights Investigator Sarah Mae Fisher for processing. The Respondent was sent a copy of the charge on this same date and a response should be in our office approximately 30 days from the date of receipt. Once Respondent's answer is received, a copy will be forwarded to you. Please do not feel intimidated or overwhelmed by the response. We will ask you to look it over carefully, and to follow the instructions the investigator will provide to you at that time.

For your information, I have attached a copy of the Commission's administrative process flow chart. One option offered by the Commission is mediation. Mediation is a voluntary process wherein the parties discuss the dispute to see if an agreement to settle their differences can be worked out. If you are interested in using this service, be sure to tell your investigator.

It may take the Commission up to twelve months to complete the case processing, so you must remember to maintain contact with the Commission and advise us of any changes to your contact information. If we are unable to locate you, it could result in the closure of your charge.

Please be advised that the files of the Commission are not open to the public at large. However, this case file is available to both parties during regular business hours with the exception of any notes or documents regarding confidential negotiations created during the course of mediation.

If you have any questions regarding your charge, do not hesitate to contact your investigator.

Sincerely,

A handwritten signature in black ink, appearing to read "Cara Z. Weech".

Cara Z. Weech  
Civil Rights Investigator

CZW:sca  
Enclosure



Brentwood Dr  
Boise, Id. 83709

FIRST-CLASS  
071V00711817  
83706  
000009597

41

FILED

SEP 15 9 2010

INDUSTRIAL COMMISSION

State of Idaho

Industrial Commission

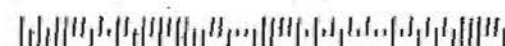
700 S. Clearwater Lane

POB 83720

Boise, Id. 83720-0041

Att. Unemployment Appeals Division

IDOL #6616-2010



BRADLEY B. POOLE, CHARTERED  
 ATTORNEY AT LAW  
 1110 North Five Mile Road  
 Boise, Idaho 83713  
 Telephone: (208) 322-5536  
 Facsimile: (208) 323-7660  
 e-mail: [brad@bradpoolelaw.com](mailto:brad@bradpoolelaw.com)  
 ISB# 1662

Attorney for *Employer*

APPEALS BUREAU  
 IDAHO DEPARTMENT OF LABOR  
 317 WEST MAIN STREET / BOISE, IDAHO 83735-4938  
 FAX: (208) 334-6440

ANGELA S. HOPKINS,  
 SSN: [REDACTED]

) DOCKET NUMBER: 6616-2010

-vs-

) REQUEST FOR HEARING

PNEUMOTECH INC.,

Employer,

FILED

OCT - 8 2010


and

INDUSTRIAL COMMISSION

IDAHO DEPARTMENT OF LABOR

COMES NOW, Pneumotech, Inc., by and through its attorney of record, Bradley B. Poole, and requests a hearing before the Industrial Commission in this case.

DATED this 8<sup>th</sup> day of October, 2010.

  
 BRADLEY B. POOLE  
 Attorney for Employer



This Motion is based upon the affidavit filed herewith.


DATED this 8<sup>th</sup> day of October, 2010.

  
BRADLEY B. POOLE  
Attorney for Employer

### CERTIFICATE OF MAILING

I hereby certify that on the 8<sup>th</sup> day of October, 2010, I served a true and correct copy of the within and foregoing document upon the following named below in the manner noted:

Angela S. Hopkins  
6904 Brentwood Dr.  
Boise, Idaho 83709

☒   
[ ]  
[ ]  
[ ]

U.S. Mail, postage prepaid  
Hand-Delivered  
Overnight Mail  
Facsimile:

  
BRADLEY B. POOLE

BRADLEY B. POOLE, CHARTERED  
 ATTORNEY AT LAW  
 1110 North Five Mile Road  
 Boise, Idaho 83713  
 Telephone: (208) 322-5536  
 Facsimile: (208) 323-7660  
 email: [brad@bradpoolelaw.com](mailto:brad@bradpoolelaw.com)  
 ISB# 1662

Attorney for *Employer*

APPEALS BUREAU  
 IDAHO DEPARTMENT OF LABOR  
 317 WEST MAIN STREET / BOISE, IDAHO 83735-4938  
 FAX: (208) 334-6440

ANGELA S. HOPKINS,  
 SSN: [REDACTED]

) DOCKET NUMBER: 6616-2010

-vs-

)  
 )  
 ) NOTICE OF SUBMISSION  
 ) OF DOCUMENTS

PNEUMOTECH INC.,

Employer,

)  
 )  
 ) FILED

and

)  
 )  
 ) OCT - 8 2010


IDAHO DEPARTMENT OF LABOR

)  
 )  
 ) INDUSTRIAL COMMISSION  
 )  
 )  
 )

COMES NOW, Pneumotech, Inc., an Idaho corporation ("Employer"), by and through its attorney, Bradley B. Poole, and hereby requests that the Industrial Commission take notice of the following listed and attached documents:

- Letter from Stacy Gibbons dated September 20, 2010;
- Letter from Curtis Kunkel dated September 21, 2010.

DATED this 7<sup>th</sup> day of October, 2010

  
BRADLEY B. POOLE  
Attorney for Employer

### CERTIFICATE OF SERVICE

I hereby certify that on the 8<sup>th</sup> day of October, 2010, I served a true and correct copy of the within and foregoing document upon the following named below in the manner noted:

Angela S. Hopkins  
6904 Brentwood Dr.  
Boise, Idaho 83709

☒ U.S. Mail, postage prepaid  
[ ] Hand-Delivered  
[ ] Overnight Mail  
[ ] Facsimile:

  
BRADLEY B. POOLE

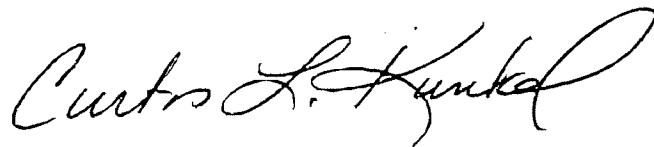
Curtis Kunkel  
10511 Tanglewood Dr.  
Boise Id 83709

To whom it may concern:

September 21, 2010

I had been requested to keep track of arrival and departure times on Angela Hopkins any time Mr. Sickles was gone since around February 2010. Angela was late off and on by an average of 20 minutes. On The 18TH of June, she was 25 minutes late; on the 21<sup>st</sup> she did not show up for work until 11:50 PM. Angela took generally an hour and half for lunch. Her tardiness had become routine over the last several months, and created a lot of scheduling problems with customers, which is why Mr. Sickles asked me to keep an eye on things while he was gone anywhere. She had said to myself and some of the other co-workers that "she wished she would get laid off or fired."

I swear to these statements as being true



To whom it may concern:

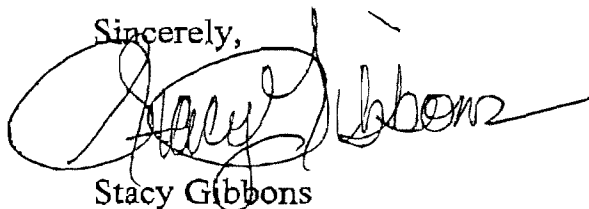
Stacy Gibbons  
3658 Williamsburg Way  
Boise, Idaho  
83706

September 20, 2010

I was hired to work on the service database and fill in for Angela Hopkins as needed. Since I have been working at Pneumotech Angela was consistently late everyday from 10 to 20 minutes. On the 21<sup>st</sup> she did not show up for work until noon. Angela did take a daily lunch for generally an 1hr to 1 ½ hrs. I did ask Angela to please train me on all aspects of her job so I could fill in or help as needed, she told me that there was not enough work for 2 people to do therefore she really did not have anything to show me. On more than one occasion Angela told me that she wished that Garth would fire her so she could draw unemployment. I have been treated very well and with much respect by all of my co-workers and supervisor.

The statements I have made are factual and true.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stacy Gibbons', with a large, stylized loop at the beginning.

Stacy Gibbons



BRADLEY B. POOLE, CHARTERED  
 ATTORNEY AT LAW  
 1110 North Five Mile Road  
 Boise, Idaho 83713  
 Telephone: (208) 322-5536  
 Facsimile: (208) 323-7660  
 email: [brad@bradpoolelaw.com](mailto:brad@bradpoolelaw.com)  
 ISB# 1662

Attorney for *Employer*

APPEALS BUREAU  
 IDAHO DEPARTMENT OF LABOR  
 317 WEST MAIN STREET / BOISE, IDAHO 83735-4938  
 FAX: (208) 334-6440

ANGELA S. HOPKINS,  
 SSN: [REDACTED]

Claimant,

[REDACTED]

[REDACTED] INC.,

Employer,

and

IDAHO DEPARTMENT OF LABOR

DOCKET NUMBER: 6616-2010

AFFIDAVIT OF  
 BRADLEY B. POOLE

FILED

OCT - 8 2010

INDUSTRIAL COMMISSION

STATE OF IDAHO )

:ss

County of Ada )


BRADLEY B. POOLE, being first duly sworn on oath deposes and says:

1. I am the attorney for the Employer in this case, Pheumotech, Inc., and as such  
 am familiar with the facts and circumstances contained in this Affidavit.

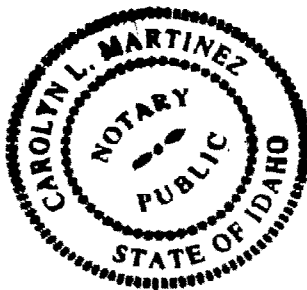
2. The Appeal in this case was filed on or about August 26, 2010. After that, a recording of the previous hearing, but not copies of the documents that were entered into evidence was sent to me. This document did not reference this mailing being the "record" in the case but merely a recording. At the time that this was sent, my assistant was on vacation. Counting mailing time, by the time my assistant returned, more than a week had passed since the CD had been mailed. I then had my assistant call to find out when the remainder of the actual record would be forwarded to me. She was informed that it would be sent in due course. It was not my understanding that the recording itself was the record.

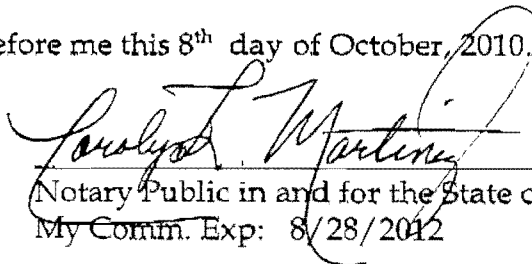
3. The Employer wishes to present additional information including testimony from two individuals whose statements are enclosed with these documents. In the interest of justice, a hearing will be required in this matter and is requested by the Employer.

DATED This 8<sup>th</sup> day of October, 2010.

  
BRADLEY B. POOLE  
Attorney for Employer

SUBSCRIBED AND SWORN before me this 8<sup>th</sup> day of October, 2010.



  
Notary Public in and for the State of Idaho  
My Comm. Exp: 8/28/2012

**CERTIFICATE OF MAILING**

I hereby certify that on the 8<sup>th</sup> day of October, 2010, I served a true and correct copy of the within and foregoing document upon the following named below in the manner noted:

Angela S. Hopkins  
6904 Brentwood Dr.  
Boise, Idaho 83709

☒ U.S. Mail, postage prepaid  
☐ Hand-Delivered  
☐ Overnight Mail  
☐ Facsimile:

  
BRADLEY B. POOLE

**BRADLEY B. POOLE, CHARTERED  
ATTORNEY AT LAW**

1110 North Five Mile Road

Boise, Idaho 83713

Phone: (208) 322-5536

Fax: (208) 323-7660

e-mail: [carolyn@bradpoolelaw.com](mailto:carolyn@bradpoolelaw.com)

Carolyn Martinez, Legal Assistant

**FACSIMILE  
TRANSMITTAL**

To: INDUSTRIAL COMMISSION

Fax: 208.332.7558

From: Bradley B. Poole

Date: October 13, 2010

Re: IDOL #6616-2010

Pages: (Incl. cover pg.)

CC:

☐ Urgent☒ To Review☒ Per Our Discussion☐ Please Reply☐ PLEASE FILE

INDUSTRIAL COMMISSION

OCT 13 2010

FILED

Notes:

Attn: Mary

Per our telephone conversation, attached are the "Certificate of Mailing" pages regarding our filing in the above-referenced matter.

52

## CERTIFICATE OF MAILING

I hereby certify that on the 7<sup>th</sup> day of October, 2010, I served a true and correct copy of the within and foregoing document upon the following named below in the manner noted:

Idaho Dept of Labor  
317 West Main Street  
Boise, Idaho 83735

☐ U.S. Mail, postage prepaid  
☐ Hand-Delivered  
☐ Overnight Mail  
☒ Facsimile: 208.334.6440

Angela S. Hopkins  
6904 Brentwood Dr.  
Boise, Idaho 83709

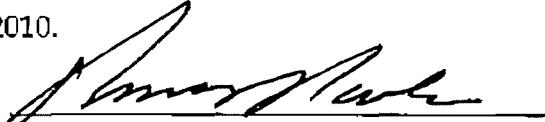
☒ U.S. Mail, postage prepaid  
☐ Hand-Delivered  
☐ Overnight Mail  
☐ Facsimile:

  
BRADLEY B. POOLE

FILED  
OCT 13 2010  
INDUSTRIAL COMMISSION

This Motion is based upon the affidavit filed herewith.

DATED this 7<sup>th</sup> day of October, 2010.



BRADLEY B. POOLE  
Attorney for Employer

INDUSTRIAL COMMISSION

OCT 13 2010

FILED

### CERTIFICATE OF MAILING

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Angela S. Hopkins  
6904 Brentwood Dr.  
Boise, Idaho 83709

☒ U.S. Mail, postage prepaid  
☐ Hand-Delivered  
☐ Overnight Mail  
☐ Facsimile:



BRADLEY B. POOLE

## CERTIFICATE OF MAILING

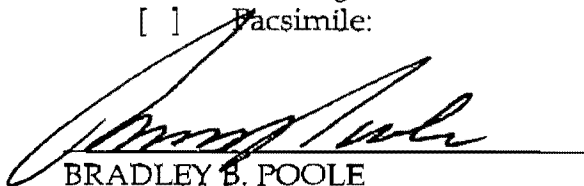
I hereby certify that on the 7<sup>th</sup> day of October, 2010, I served a true and correct copy of the within and foregoing document upon the following named below in the manner noted:

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Boise, Idaho 83735

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Boise, Idaho 83709

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☐ Hand-Delivered  
☐ Overnight Mail  
☐ Facsimile:

  
BRADLEY B. POOLE

INDUSTRIAL COMMISSION

OCT 13 2010

FILED

DATED this 7<sup>th</sup> day of October, 2010.



BRADLEY B. POOLE  
Attorney for Employer

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Angela S. Hopkins  
6904 Brentwood Dr.  
Boise, Idaho 83709

☒ U.S. Mail, postage prepaid  
☐ Hand-Delivered  
☐ Overnight Mail  
☐ Facsimile:

INDUSTRIAL COMMISSION

OCT 13 2010

FILED



BRADLEY B. POOLE



**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

ANGELA S HOPKINS,

Claimant,

vs.

PNEUMOTECH INC,

Employer,

and

IDAHO DEPARTMENT LABOR.

**IDOL # 6616-2010**

**ORDER DENYING REQUESTS  
FOR A NEW HEARING**

FILED  
OCT 14 2010  
INDUSTRIAL COMMISSION

On August 26, 2010, Employer, Pneumotech, Inc, through counsel, filed a timely appeal of a Decision issued by Idaho Department of Labor. The Appeals Examiner found Claimant, Angela S. Hopkins, eligible unemployment insurance benefits. The Commission served notice of the appeal on the parties on August 31, 2010. On September 1, 2010, the Commission served an audio recording of the hearing on all interested parties.

Both parties have requested a new hearing. Claimant submitted correspondence containing additional evidence for consideration on appeal. (Claimant's correspondence, filed September 9, 2010). Since the Commission reviews these matters based on the record presented before the Appeals Examiner, Claimant's submission is treated as a request for a new hearing to augment the record. On October 8, 2010, Employer specifically requested a new hearing and submitted additional witness statements. (Employer's request for hearing, filed October 8, 2010; Employer's Notice of Submission of Documents, filed October 8, 2010). This Order deals solely with those requests.

Idaho Code § 72-1368(7), gives the Commission authority to "in its sole discretion, conduct a hearing to receive additional evidence or may remand the matter back to the appeals examiner for an additional hearing and decision." However, prior to determining the merits of

whether a party is entitled to a new hearing, the party must first make a timely request. Neither party has done so in this case.

“Appeals before the Commission are governed by the Rules of Appellate Practice and Procedure under the Idaho Employment Security Law.” Vernon K. Smith v. Idaho Dept. of Labor, 148 Idaho 72, 218 P.3d 1133, 1135 (2009). The parties received a copy of the Rules of Appellate Practice and Procedure under the Idaho Employment Security Law, (“RAPP”) effective as amended, March 1, 2009, with the Notice of Appeal. Rule 7(A) of the RAPP provides parties seven (7) days from the date of mailing of the record to file with the Commission a written request for a new hearing. In this case, the audio recording of the hearing was mailed to the parties on September 1, 2010. Therefore, the seven-day window of opportunity to file a request for a new hearing expired on Wednesday, September 8, 2010.

Claimant’s request was filed with the Commission on September 9, 2010 and is therefore late. Claimant’s request for a new hearing is DENIED. Claimant’s additional evidence contained in her correspondence will not be considered by the Commission.

Likewise, Employer filed its request on October 8, 2010. Employer’s counsel maintains that he was unaware the record was complete upon the mailing of the audio recording of the hearing. Employer’s counsel further argues that he was waiting for the exhibits that were entered into the record during the hearing. Employer received copies of the exhibits prior to the hearing. Therefore, Employer was in timely receipt of those documents. The Commission completed that record upon serving the parties with the Notice of Appeal and a copy of the hearing. Employer has not provided sufficient cause to extend the timeframe for requesting a hearing.

However, even if the Commission treated Employer’s request as timely, Employer’s request would still be denied. Employer participated in the hearing and had ample opportunity to present evidence during the hearing. (Audio Recording). Further, the hearing instructions

accompanying the Notice of Telephone Hearing instructed Employer that it was pertinent to include all evidence at that time and the procedure for doing so. (Exhibit 2).

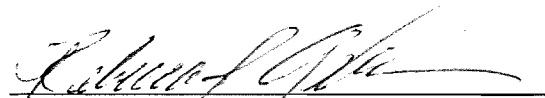
Additionally, Employer's ability to provide testimony and evidence for the Appeals Examiner did not end with the conclusion of the hearing. Employer could have asked that the Appeals Examiner re-open the hearing to take additional evidence, as described in the documents accompanying the Hearing Notice. (Exhibit 2, p. 2). The Appeals Bureau's procedure provides a means for admitting additional evidence or witness testimony that was not available for the original hearing. Nevertheless, there is nothing in the record to suggest that Employer took advantage of that opportunity. Employer's request for a new hearing is DENIED.

Both Claimant and Employer's requests for a new hearing are DENIED. The timeframe for submitting additional evidence to the Commission has expired and no further requests will be considered. Pursuant to Idaho Code § 72-1368(7), the Commission will consider only that evidence in the record as established by the Appeals Examiner.

A decision regarding Employer's appeal of the Appeals Examiner's Decision is forthcoming.


DATED this 14 day of October 2010.

INDUSTRIAL COMMISSION

  
Rebecca J. Ophus, Referee

ATTEST:

  
Assistant Commission Secretary



**CERTIFICATE OF SERVICE**

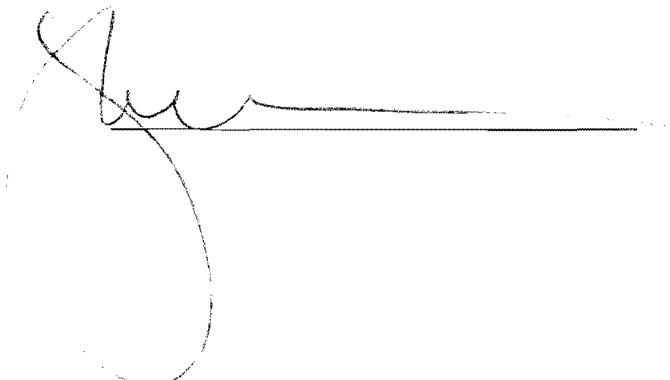
I hereby certify that on the 14 day of October 2010, a true and correct copy of **Order Denying Requests for a New Hearing** was served by regular United States mail upon each of the following:

DEPUTY ATTORNEY GENERAL  
IDAHO DEPARTMENT OF LABOR  
**STATE HOUSE MAIL**  
317 W MAIN STREET  
BOISE ID 83735

BRADLEY B POOLE  
ATTORNEY AT LAW  
1110 NORTH FIVE MILE ROAD  
BOISE ID 83713

ANGELA S HOPKINS  
6904 BRENTWOOD DR  
BOISE ID 83709

mcs

A handwritten signature in black ink, appearing to be 'mcs', written over a horizontal line.

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ANGELA S. HOPKINS,  
SSN: [REDACTED]

[REDACTED]  
[REDACTED]  
PNEUMOTECH, INC.,

Employer,

and

IDAHO DEPARTMENT OF LABOR.

IDOL #6616-2010

DECISION AND ORDER

FILED

11/10/2010

INDUSTRIAL COMMISSION

*Employer appeals an Appeals Examiner's Decision finding Claimant eligible for benefits and Employer's account chargeable. AFFIRMED.*

Employer, Pneumotech, Inc., appeals to the Industrial Commission a Decision issued by the Idaho Department of Labor ("IDOL" or "Department") ruling Claimant, Angela S. Hopkins, eligible for unemployment insurance benefits. The Department's Appeals Examiner concluded that; 1) Employer discharged Claimant for reasons other than misconduct connected with employment; and; 2) Employer's account is chargeable for experience rating purposes. Subsequent to the Appeals Examiner's Hearing, Employer and Claimant each filed documents that requested, or were construed to request, a new hearing. Those requests were denied by an Order Denying Requests for A New Hearing entered on October 14, 2010.

The undersigned Commissioners have conducted a *de novo* review of the record as provided for in Idaho Code § 72-1368(7) and opinions issued by the Idaho Supreme Court. The Commission has relied on the audio recording of the hearing before the Appeals Examiner held on August 10, 2010, along with the Exhibits [1 through 7] admitted into the record during that proceeding.

## FINDINGS OF FACT

Based on the testimony and the evidence, the Commission concurs with and adopts the Findings of Fact as set forth in the Appeals Examiner's Decision.

## DISCUSSION

Claimant worked as a bookkeeper/receptionist for Employer from June 3, 1995 until June 22, 2010, when she was discharged by Garth Sickles, CEO of Employer. (Audio recording). Mr. Sickles testified that he discharged Claimant when he did, because he learned that she had refused to train her assistant, but that this event was, essentially, just the "last straw." He explained that over the previous two years, Claimant had been habitually tardy, had taken excessive time off for personal illness and otherwise, and had played video games at work. Mr. Sickles testified that he had warned Claimant repeatedly and had hoped her behavior would improve because he had a great deal of time and money invested in her. (Audio recording). For her part, Claimant categorically denied Mr. Sickles' allegations. (Audio recording).

There is no dispute that Claimant was discharged. (Audio recording). The Idaho Employment Security Law provides unemployment insurance benefits to claimants who become unemployed due to no fault of their own. In the case of a discharge, the issue is whether the claimant committed some form of employment-related misconduct that would render him or her ineligible for unemployment benefits pursuant to Idaho Code § 1366(5). The burden of proving misconduct by a preponderance of the evidence falls strictly on the employer. Appeals Examiner of Idaho Dept. of Labor v. J.R. Simplot Co., 131 Idaho 318, 320, 955 P.2d 1097, 1099 (1998). If the discharging employer does not meet that burden, benefits must be awarded to the claimant. Roll v. City of Middleton, 105 Idaho 22, 25, 665 P.2d 721, 724 (1983); Parker v. St. Maries Plywood, 101 Idaho 415, 419, 614 P.2d 955, 959 (1980).

What constitutes “just cause” in the mind of an employer for dismissing an employee is not the legal equivalent of “misconduct” under Idaho’s Employment Security Law. The two issues are separate and distinct. Therefore, whether the employer had reasonable grounds according to the employer’s standards for dismissing a claimant is not controlling of the outcome in these cases. Our only concern is whether the reasons for discharge constituted “misconduct” connected with the claimant’s employment such that the claimant can be denied unemployment benefits. Beaty v. City of Idaho Falls, 110 Idaho 891, 892, 719 P.2d 1151, 1152 (1986).

The Idaho Supreme Court has established three grounds upon which to determine whether Claimant has engaged in “misconduct” as it applies to eligibility for unemployment benefits. Further, the Court requires the Commission to consider all three grounds in determining whether misconduct exists. Dietz v. Minidoka County Highway Dist., 127 Idaho 246, 248, 899 P.2d 956, 958 (1995). We have carefully considered all three grounds for determining misconduct and conclude the issue can be disposed of under the “standards-of-behavior” analysis without further unnecessary explanation of the other two grounds.

Under the “standards-of-behavior” analysis, the employer must show by a preponderance of the evidence that it communicated its expectations to the claimant, or that its expectations “flowed normally” from the employment relationship. Further, the employer must demonstrate that those expectations were objectively reasonable as applied to the claimant. As the Idaho Supreme Court has pointed out, an “employer’s expectations are ordinarily reasonable only where they have been communicated to the employee.” Folks v. Moscow School District No. 281, 129 Idaho 833, 838, 933 P.2d 642, 647 (1997).

Notably, there is no requirement that the employer must demonstrate that the employee’s behavior was subjectively willful, intentional, or deliberate in his or her disregard of the employer’s expectations. Welch v. Cowles Publishing Co., 127 Idaho 361, 364, 900 P.2d 1372,

1375 (1995). Because the employer need not demonstrate some form of “malice” on the part of the employee, what communication did or did not take place between the employer and the claimant becomes a key element in these cases. An employee can only be held accountable for breaching those expectations that he or she understood, explicitly or implicitly, and was capable of satisfying. Puckett v. Idaho Department of Corrections, 107 Idaho 1022, 695 P.2d 407 (1985).

Claimant and Mr. Sickles were the only witnesses to appear and provide testimony at the Appeals Examiner’s Hearing. Mr. Sickles testified that Claimant was discharged because she was habitually tardy and absent, that she played video games at work, and that in the final incident, she had refused to train her assistant. Mr. Sickles had not previously instructed Claimant to train the assistant, and he relied upon the assistant’s report, without first discussing the matter with Claimant, in determining Claimant had refused to train her. (Audio recording).

Mr. Sickles testified that he had repeatedly warned Claimant that her behavior was unacceptable, but there is no documentation of any warnings in the record. Mr. Sickles recalled that he warned Claimant about playing video games on August 17, 2008. He also recalled that Claimant had taken June 8, 2009 off from work and that he learned she had been spotted at a water park that day. He did not allege that he ever discussed this incident with Claimant. (Audio recording).

Claimant denied these allegations, and further denied that Mr. Sickles had ever warned her that she was behaving in ways that would lead to her discharge if she continued. Specifically, Claimant denied that she was habitually tardy or played video games at work. She testified, without objection, that it was Employer’s policy to automatically terminate any employee who was absent without Mr. Sickles’ permission and that she always had permission when she needed a day off work. She also testified that Employer’s computer network had a firewall that prevented employees from accessing unauthorized sites. As for her assistant, Claimant testified



that she would give her work when she could, but the office was slow and she didn't have anything for her to do on the day in question.

Based on the evidence in this record, we find that Employer had generally reasonable expectations that Claimant would work her scheduled hours unless she had permission to be late or absent. However, given the wide variation among employers in policies pertaining to personal use of company computers and the lack of sufficient evidence to determine exactly what Employer communicated to Claimant on this subject, we do not find that Employer had a reasonable expectation that Claimant would not ever play video games on the company computer. Rather, we find that Employer had a generally reasonable expectation that Claimant would not play video games when she was expected to be performing other tasks for Employer. With respect to Claimant's assistant, we find Employer had a generally reasonable expectation that Claimant would cooperate in her training.

We further find that Employer has failed to establish that Claimant breached any of its reasonable expectations. There is insufficient evidence in the record to prove by a preponderance that Claimant was ever late, absent without approval, playing video games when she should be performing other tasks for Employer or uncooperative in her assistant's training. As a result, Employer has failed to prove that Claimant's actions fell below the standard-of-behavior it had a right to expect.

Employer was within its discretion to terminate Claimant's employment, but Employer bore the burden in these proceedings of demonstrating that Claimant committed misconduct as described in the Idaho Employment Security Law. Employer has not met that burden. Accordingly, Claimant is eligible for unemployment benefits.

In this case, Employer paid the most wages to Claimant during the last four base quarters. (Exhibit 5). Idaho Code §72-1351(2)(a) provides that an employer's experience rated account is

chargeable for benefits paid to a claimant whose separation from employment resulted from discharge for reasons other than misconduct or a voluntary separation for good cause. Because we conclude that Claimant was discharged by Employer for reasons other than employment-related misconduct, we find that Employer's account is chargeable for experience rating purposes.

### CONCLUSIONS OF LAW

The Commission sets forth its own Conclusions of Law as follows:

#### I

Claimant was discharged by Employer for reasons other than employment-related misconduct.

#### II

Employer's account is chargeable for experience rating purposes.

### ORDER

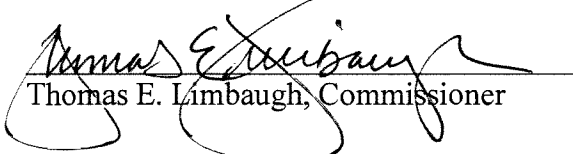
Based on the forgoing analysis, the Decision of the Appeals Examiner is AFFIRMED and Claimant is eligible for unemployment benefits. This is a final order under Idaho Code § 72-1368(7).

DATED this 2nd day of November 2010.

INDUSTRIAL COMMISSION

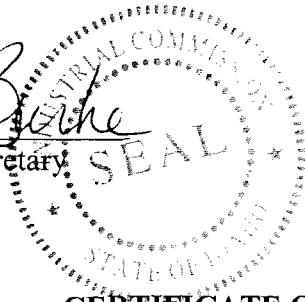
  
R.D. Maynard, Chairman

  
Thomas P. Baskin, Commissioner

  
Thomas E. Limbaugh, Commissioner

ATTEST:

Dona K. Burke  
Assistant Commission Secretary



**CERTIFICATE OF SERVICE**

I hereby certify that on the 2nd day of November 2010, a true and correct copy of the **Decision and Order** was served by regular United States mail upon each of the following:

BRADLEY B POOLE  
ATTORNEY AT LAW  
1110 NORTH FIVE MILE ROAD  
BOISE ID 83713

ANGELA S HOPKINS  
6904 BRENTWOOD DR  
BOISE ID 83709

DEPUTY ATTORNEY GENERAL  
IDAHO DEPARTMENT OF LABOR  
**STATE HOUSE MAIL**  
317 W MAIN STREET  
BOISE ID 83735

JS

Dona K. Burke

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

ANGELA S. HOPKINS, )  
 )  
 Claimant, )  
 )  
 vs. )  
 )  
 PNEUMOTECH INC., )  
 )  
 Employer, )  
 )  
 and )  
 )  
 IDAHO DEPARTMENT OF LABOR. )  
 \_\_\_\_\_ )

IDOL # 6616-2010

FILED  
NOV - 9 2010  
INDUSTRIAL COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of NOVEMBER, 2010, a true and correct copy of **DECISION AND ORDER FILED NOVEMBER 2, 2010, given to Claimant personally at the Commission office:**

ANGELA S. HOPKINS

db

  
Assistant Commission Secretary

Angela Hopkins 1 DOL #6616-2010  
5100 Morris Hill Rd.  
Boise Id. 83706

Angela Hopkins

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IN THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

IDAHO DEPARTMENT OF LABOR

70

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to *Rule 11(a)(2), I.A.R.*

3. A preliminary statement of the issues on appeal when the appellant then intends to assert in the appeal is as follows:

a. That the hearing officer and the Industrial Commission improperly found that the Claimant in this case is entitled to unemployment benefits.

b. That the hearing officer and the Industrial Commission improperly found that the Employee was not terminated for misconduct.

c. That the hearing officer and the Industrial Commission improperly disallowed the Employer to present additional evidence.

d. That the hearing officer and the Industrial Commission improperly denied a new evidentiary hearing in this matter.

4. No order has been entered sealing all or any portion of the record.

5. A reporter's transcript is requested.

6. I certify:


a. That a copy of this Notice of Appeal has been served on the reporter.

b. That the Industrial Commission has been paid the estimated fee for preparation of the reporter's transcript, if any.

c. That the estimated fee for preparation of the Clerk's record has been paid.

d. That service has been made upon all parties required to be served pursuant to Rule 20 (and the Attorney General of Idaho pursuant to *Section 67-1401(1), Idaho Code.*)

DATED This 10<sup>th</sup> day of December, 2010.

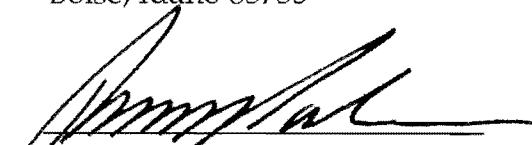
  
BRADLEY B. POOLE  
Attorney for Appellant

#### CERTIFICATE OF SERVICE

I hereby certify that on the 10<sup>th</sup> day of December, 2010, I served a true and correct copy of the within and foregoing NOTICE OF APPEAL upon each of the following:

Angela S. Hopkins  
6904 Brentwood Drive  
Boise, Idaho 83709

Idaho Deputy Attorney General  
Idaho Department of Labor  
Statehouse Mail  
Boise, Idaho 83735

  
BRADLEY B. POOLE



BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

ANGELA S. HOPKINS, Respondent/Claimant, )

vs. )

PNEUMOTECH INC., Appellant/Employer, )

and )

IDAHO DEPARTMENT OF LABOR/Respondent. )

SUPREME COURT #: 38354

CERTIFICATE OF APPEAL  
OF ANGELA S. HOPKINS

Appeal From: Industrial Commission Chairman R.D. Maynard presiding.

Case Number: IDOL # 6616-2010

Order Appealed from: DECISION AND ORDER FILED NOVEMBER 2, 2010

Representative for Claimant: ANGELA S. HOPKINS, PRO SE  
5100 Morris Hill Road  
Boise ID 83706

Representative for Employers: BRADLEY B. POOLE, CHARTERED  
1110 North Five Mile Road  
Boise, ID 83713

Representative for IDOL: TRACEY K. ROLFSEN  
Deputy Attorney General  
317 W Main St  
Boise ID 83735

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COURT OF APPEALS  
2010 DEC 14 A 9:00

Appealed By: PNEUMONTECH, INC., EMPLOYER/Appellant

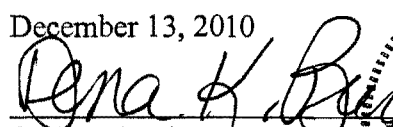
Appealed Against: ANGELA S. HOPKINS/Respondent and  
IDAHO DEPARTMENT OF LABOR/Respondent

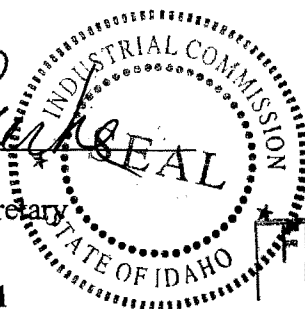
Notice of Appeal Filed: December 13, 2010

Appellate Fee Paid: \$86.00 to Supreme Court and  
\$50.00 to Industrial Commission, checks were received.

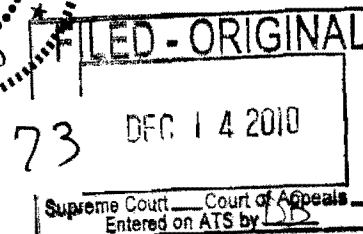
Transcript: Transcript will be ordered.

Dated: December 13, 2010

  
Dena K. Burke  
Assistant Commission Secretary



CERTIFICATE OF APPEAL OF ANGELA S. HOPKINS - 1




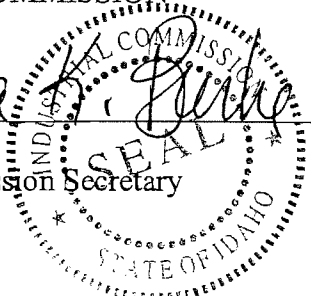
## CERTIFICATION

I, Dena K. Burke , the undersigned Assistant Commission Secretary of the Industrial Commission of the State of Idaho, hereby CERTIFY that the foregoing is a true and correct photocopy of the Notice of Appeal filed December 13, 2010; Decision and Order filed November 2, 2010; and; and the whole thereof, Docket Number 6616-2010 for ANGELA S. HOPKINS.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Commission this 13<sup>TH</sup> day of December, 2010.

INDUSTRIAL COMMISSION

  
Dena K. Burke  
Assistant Commission Secretary



CERTIFICATION

### CERTIFICATION OF RECORD

I, Gina Espinosa, the undersigned Assistant Commission Secretary of the Industrial Commission, do hereby certify that the foregoing record contains true and correct copies of all pleadings, documents, and papers designated to be included in the Agency's Record on appeal by Rule 28(3) of the Idaho Appellate Rules and by the Notice of Appeal, pursuant to the provisions of Rule 28(b).

I further certify that all exhibits admitted in this proceeding are correctly listed in the List of Exhibits (i). Said exhibits will be lodged with the Supreme Court after the Record is settled.

DATED this 10<sup>th</sup> day of January, 2011.

  
Assistant Commission Secretary



BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

ANGELA S. HOPKINS, Respondent/Claimant,	)	
	)	<b>SUPREME COURT #: 38354</b>
vs.	)	
	)	
PNEUMOTECH INC., Appellant/Employer,	)	<b>NOTICE OF COMPLETION</b>
	)	
and	)	
	)	
IDAHO DEPARTMENT OF LABOR/Respondent.	)	
_____	)	

TO: STEPHEN W. KENYON, Clerk of the Courts; and  
ANGELA S. HOPKINS, Claimant/Appellant; and  
BRADLEY B. POOLE, Employer/Respondent, and  
TRACEY K. ROLFSEN, Idaho Department of Labor, Respondent.

YOU ARE HEREBY NOTIFIED that the Agency's Record was completed on this date and,  
pursuant to Rule 24(a) and Rule 27(a), Idaho Appellate Rules, copies of the same have been served  
by regular U.S. mail upon each of the following:

<b>For Claimant/Appellant:</b>	ANGELA S. HOPKINS, PRO SE 5100 Morris Hill Road Boise ID 83706
<b>For Employer/Respondent:</b>	BRADLEY B. POOLE, CHARTERED 1110 North Five Mile Road Boise, ID 83713
<b>For Respondent:</b>	TRACEY K. ROLFSEN Deputy Attorney General 317 W Main St Boise ID 83735

YOU ARE FURTHER NOTIFIED that pursuant to Rule 29(a), Idaho Appellate Rules, all  
parties have twenty-eight days from the date of this Notice in which to file objections to the

**NOTICE OF COMPLETION - 1**

Agency's Record, including requests for corrections, additions or deletions. In the event no objections to the Agency's Record or Reporter's Transcript are filed within the twenty-eight day period, the Agency's Record and Reporter's Transcript shall be deemed settled.

DATED this 10<sup>th</sup> day of January, 2011.

Gina Espinosa

Gina Espinosa  
Assistant Commission Secretary